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Current Topics.

The Tyranny of the Practice Rules.

WHILE we all admire the amazing industry and the meticulous accuracy of the respective editors of the "Annual" and "Yearly" Practices, yet, as we view the tendency on the part of each of these volumes to greater embonpoint in each fresh recension, we can heartily sympathise with the complaint voiced by Mr. C. L. NORDON at the recent special meeting of The Law Society as to the difficulties which beset practising solicitors to-day. As he said, with that touch of pleasantly humorous exaggeration which usually characterises his utterances and which adds to their effectiveness, "the work was becoming harder and harder; solicitors were expected to know by heart such things as 2,000 pages of the Annual Practice, 1,700 pages of the Statute Book, and many volumes of court forms"—a mass of printed matter at which the imagination fairly boggles. It is, indeed, scarcely creditable that the practice of the law should be hampered by such an amount of detail. Again and again in the past protests have been made against the tyranny of these books, the most cogent being that heard by the writer of this note many years ago in the Court of Appeal from the lips of the late Lord Justice RONAN of the Irish Bench. A case was in progress relating to Irish mortgages in which Mr. RONAN (as he then was) was engaged, having been brought over specially for this purpose. In the course of his argument he had occasion to refer to the White Book—there was no Red Book then—whereupon Lord Justice MATHEW inquired: "Have you the White Book in Ireland, Mr. Ronan?" to which came the swift reply: "Yes, my lord, another instance of Saxon tyranny!" Indeed, "tyranny" is the apt word to describe the two overgrown volumes.

United States Judiciary.

PRESIDENT ROOSEVELT'S message to Congress foreshadowing drastic reforms in the Federal judiciary appears to have created no little excitement in America. Included among the reforms envisaged is one which will enable the President to nominate and, with the advice and consent of the Senate, to appoint a considerable number of new judges in those courts where any of the existing members have attained the age of seventy and have served for at least ten years. The avowed object, and no doubt a very laudable one, is "to eliminate the congestion of calendars and to make the judiciary as a whole less static by the constant and systematic addition of new blood to its personnel," but there are certain shrewd observers who detect in the scheme something further, namely, the cultivation of a different attitude to the legislation which emanates from Congress. Here we find a very marked point of divergence between the powers of the Supreme Court of the United States and our own courts. In this country no court can inquire into the validity of any Act of Parliament; here Parliament is supreme. It is not so in the United States, where the Constitution is supreme, and to it all legislation must conform. Again and again statutes dear to the heart of the President for the time being have been declared invalid as offending against some clause in the Constitution. Whether this was in the mind of the President in formulating his scheme of reform we do not pretend to say; but it has been pointed out that if, as is possible, six new judges are, under the scheme, added to the Supreme Court, this may make all the difference in the consideration of new legislation upon which the country is embarked and which, naturally enough, the President wishes to see materialise. The outcome of this movement will be watched with no little interest not only in the United States but also in this and other countries.

Central Criminal Court: February Session.

THE February Session of the Central Criminal Court opened last Tuesday with a comparatively light list. The cases in the High Court Judge's List are being dealt with by GODDARD, J. One charge of attempted murder, one of manslaughter, one of infanticide, one of attempted concealment of birth, three of causing grievous bodily harm, and four of malicious wounding, figured in the list at the beginning of the week, which showed a total of fifty-three persons awaiting trial or sentence. The list also included six charges of bigamy, two

each of coining and forgery, four of breaking and entering and one each of robbery with violence, demanding money with menaces, fraudulent conversion, and one offence against the Post Office.

The Probation System.

Mr. S. W. Harris, Assistant Under-Secretary at the Home Office, made some interesting observations on the subject of the modern probation system in the course of this year's Clarke Hall lecture which he recently delivered in the Hall of Gray's Inn. The vital difference, he said, between probation and several other forms of punishment was that the offender who was placed on probation was not deprived of his liberty. He suggested that, in view of the notion that one placed on probation was "let off," particularly because he was told that there was no conviction attaching to the offence and of other considerations, the probation system would be greatly strengthened by a re-statement in some future statute of its underlying principles. He urged that much could be done by the judicious use of suitable conditions to make the treatment suit not so much the offence as the offender. Examples of such were that the offender, to whom drink was a temptation, could be required to abstain from intoxicants; the youth whose downfall was due to bad associates could be required to avoid their company: the young woman to whom the dance hall was a fatal attraction could be required to submit herself to a well-regulated curfew. The speaker went on to record that in 1934 nearly 20,000 persons found guilty of indictable crimes were placed on probation. What, he asked, would have happened to them if there had been no probation system? Sir Herbert Samuel who, as Parliamentary Under-Secretary for the Home Department, was responsible for the Probation of Offenders Act, 1907, presided, and indicated in the course of his speech that though there had been a large increase in the population during the last thirty years, the number of committals to prison had fallen from 180,000 in a year to under 60,000. More than half of the prisons had been closed. A report of the lecture appears at p. 142 of this issue.

Matrimonial Causes: Summary Jurisdiction.

The Summary Procedure (Matrimonial and Other Matters) Bill was read a second time in the House of Commons on 5th February. The Bill, which introduces a number of changes in regard to the hearing of matrimonial causes in courts of summary jurisdiction, gives effect to the first part of the Report of the Departmental Committee on Police Court Social Services (80 Sol. J. 253). Mr. Petherick, who moved the second reading, suggested that there might be some surprise that the Bill did not give effect to some other recommendations of this committee and explained that, after careful consideration, it had been found that a separate Bill would be necessary in order to give effect to these. Perhaps one of the most important features of the new Bill is the statutory recognition it would accord to efforts directed to conciliation of the parties. The speaker above mentioned noted that at present the law is silent on the question of conciliation, although it is largely practised and, being left to the discretion of the magistrates, in widely varying degrees. It was emphasised that conciliation must not be forced. It must be done by the consent of the parties, and magistrates must not attempt to insist on conciliation being practised in cases where it was obvious that it would be hopeless. The legal rights of the parties must be maintained, and there was no word in the Bill which detracted from the existing rights of the parties in matrimonial disputes. Mention should be made in this connection of the new procedure provided by cl. 4, to the effect that if conciliation fails the court may receive from the conciliator statements of allegations. The object is to enable the court to elicit the truth in cases where the parties are nervous, tongue-tied, ill-educated, illiterate, and from these or other like causes are unable clearly to state their case. The probation officer is required to obtain the consent of the parties to his statements of allegations, and the statements themselves are not to be used as evidence in court.

Constitution of the Court.

Clause 1 of the Bill provides that domestic proceedings must be heard before three justices. Mr. Petherick stated that occasionally as many as thirty magistrates sat on a bench, and that it was a source of embarrassment to a man or a woman to have intimate family details tried before such a large bench, some members of which possibly had no understanding of, or sympathy with, this class of case. Clause 2 provides for the hearing of matrimonial cases at different times from other cases, and also for the exclusion from the court of those not directly concerned in the case. On this point Mr. Lloyd, Under-Secretary, Home Office, said that the Home Office fully appreciated the vital importance of the principle that there should be proper access by outside persons to courts of law, but he urged that in the present Bill there was considerable safeguard in the number of persons who could attend the hearing in the particular circumstances. Clause 3 of the Bill, which deals with Press reports, is drafted in accordance with the provisions of the Judicial Proceedings (Regulations of Reports) Act, 1926. Other clauses to which attention may be drawn provide for evidence being given as to the ability to pay under a maintenance order (cl. 5), for the parties not being too closely confined to question and answer (cl. 6), while cl. 8 exempts from provisions relating to the constitution of courts of summary jurisdiction such courts for the City of London or for the Metropolitan police court area. Mr. Lloyd intimated that the Government was friendly to the Bill, and that they at the Home Office would like to do their best to make it as workmanlike and efficient as possible.

The Marriage Bill in Committee.

Three more clauses have disappeared from the Marriage Bill as a result of further consideration by the Standing Committee. These are cls. 10, 12 and 14. The first of them contained provisions relating to courts of summary jurisdiction for introducing conciliation methods into matrimonial causes concerning nullity and divorce, and for reducing the costs of such proceedings for those unable to afford adequate professional advice. Mr. A. P. Herbert, who moved the deletion of this clause with reluctance, said that he would not waste the time of the committee over a proposal which he knew would not have the remotest chance of getting through legal and other barriers at a later stage, but he reiterated his belief in the spirit and intention of the clause, and expressed the hope that later on it would become the law of the land. Clause 12 affected the taking of evidence in divorce proceedings, while cl. 14 provided that a decree of dissolution should not be questioned after the expiration of five years. The amendments for the deletion of these clauses were moved on behalf of the promoters of the Bill. New clauses accepted on Tuesday, when the Bill passed the Committee stage and was ordered to be reported to the House, included one proposed by Sir John Withers to the effect that if any party who obtained a decree *nisi* failed to apply to make it absolute within three months from the date when he could first do so, then the other party to the suit should be at liberty to apply to the court, which should have power to make the decree absolute, dismiss the petition, or make such other order as it thought proper. Two further clauses, moved by Mr. W. P. Spens, K.C., provide respectively that the court shall not grant a divorce unless the parties have satisfied it that there has been no collusion or condonation, and that no petition for divorce on the ground of the respondent's desertion shall be presented within one year of the passing of the Act, and if a petition

for judicial separation on the ground of the wife's desertion is presented within that period the powers of the court to order a settlement of the wife's property shall not be exercisable.

Safety Glass: Enforcement of Regulations.

In a previous paragraph on the subject of safety glass, which became compulsory for all vehicles at the beginning of the present year, we hinted that some difficulty might be experienced in discovering whether particular vehicles were in fact so fitted. It is of interest to note in this connection the answer given by Mr. G. Lloyd, Under-Secretary, Home Office, to a question recently asked in the House of Commons in regard to what action was being taken by the Metropolitan Police to give effect to the regulations, and whether cars were being stopped on the road to see if the regulations were being observed. Mr. Lloyd said there was no provision in the regulations requiring safety glass fitted in windscreens of motor cars to be marked as such, and it was not possible, therefore, for the police, by inspection, to determine whether or not the regulation is being complied with. Police action was accordingly confined to cases where a breach of the regulations came to their notice, usually when an accident had occurred and the windscreen had been broken. The answer to the second part of the question was in the negative.

Recent Decisions.

In *Taylor* v. *Webb* (p. 137 of this issue), the Court of Appeal reversed a decision of Du Parcq, J., and held that a tenant under a headlease who was bound to keep premises "in good and tenantable repair (destruction or damage by fire and fair wear and tear excepted)" was not liable to his tenant for injury to the premises arising from fair wear and tear. The sub-tenant covenanted to keep "the outside walls and roofs properly repaired as and so far only as is required to be done . . . under the headlease." The Court of Appeal held that the tenant under the headlease had no obligations whatever with regard to reparation towards the sub-tenant and intimated that *Haskell* v. *Marlow* [1928] 2 K.B. 45 was wrongly decided.

In *Ellis and Another* v. *Fulham Corporation* (p. 140 of this issue), damages were awarded to an infant suing by his father in respect of injuries sustained by cutting his foot on a piece of glass lying at the bottom of a pool in a public park of which the defendants were owners and occupiers. The pool was provided as one of the attractions of the park and the court held that the plaintiff was an invitee in the sense used by Lord Dunedin in *Robert Addie and Sons (Collieries) Ltd.* v. *Dumbreck* [1929] A.C. 358, 371. Failure to carry out instructions which might conceivably have avoided the accident was negligence on the part of the council's servants for which the council was liable.

In *Re Sir Frederick J. Norman, deceased: Norman* v. *Norman* (*The Times*, 5th February), it was held that the gift by will of a sum of money to "the Liberal Party, local or national" was one in the alternative to either one or other of two objects with no discretion given to the executors to decide which should be benefited and, as such, was void for uncertainty; that a gift to the "Runcorn Rural Council" as a fund to be entitled "Sir Frederick Norman's Helping Hand Fund," and to be administered by the council "for the benefit of worthy citizens worsted in life's battle" was a valid charitable bequest for the benefit of persons in reduced circumstances: that a gift to the "Runcorn Nurse Fund" to be administered "in the interests of the sick and the sad" was a valid charitable gift for the benefit of the Runcorn Nursing Association; and that a gift to the local education authority "to help poor scholars of parts who would otherwise fail for lack of means to develop their genius" was a good charitable gift to the Cheshire County Council.

In *Maritime Electric Co. Ltd.* v. *General Dairies Ltd.* (*The Times*, 9th February), the Judicial Committee of the Privy Council reversed a decision of the Supreme Court of Canada and held that the appellants, a public utility company within the meaning of the Public Utilities Act of New Brunswick (R.S., 1927, c. 127), which had undercharged the respondent consumers for electric current by a failure to multiply the meter reading by ten, were not estopped from subsequently recovering the amount of the statutory charge. Estoppel, Lord Maugham intimated, was only a rule of evidence which could not avail in such a case as the present to release the suppliers from an obligation to obey the statute, nor could it enable the consumers to escape from a statutory obligation of the kind in question on their part.

In *Hope* v. *Great Western Railway Co.* (*The Times*, 9th February), the Court of Appeal (Lord Wright, M.R. and Slesser, Romer, Greene and Scott, L.JJ.) dismissed an appeal from an order of Lewis, J., in Chambers, affirming an order of a Master which granted trial of an action with a jury. The action was one in which damages were claimed for personal injuries sustained at one of the defendants' stations from, as was alleged, its defective condition and as a result of the alleged negligence of the defendants or their servants. The Court of Appeal held that the argument that under s. 6 of the Administration of Justice (Miscellaneous Provisions) Act, 1933, and the rules relating to trial by jury, the party applying for a jury had to show some special cause or reason why a jury should be ordered was ill-founded, the section aforesaid placing the matter in the completely untrammelled discretion of a court or judge.

In *Ex parte Nodder* (*The Times*, 9th February), a rule *nisi* was granted for a writ of attachment for an alleged contempt of court against the editor and the publishers of the *Evening News* in respect of the publication of a photograph of one accused of the abduction of a girl. Counsel stated that identity was in issue and the photograph was a copy of one taken by the police and used by them for their own purposes. It was published without the authority of the police who did not know how the newspaper got hold of it.

In *Brown* v. *New Empress Saloons, Ltd.*, the Court of Appeal held that Swift, J., who awarded the plaintiff £1,000 damages for personal injuries sustained as a result of a collision of two of the defendants' motor coaches, in a case in which the defendants paid £1,500 into court, was acting within his discretion in depriving the defendants of costs. Although a denial of negligence was withdrawn, the money was paid into court, with a denial of liability, and, therefore, as Slesser, L.J., intimated, there were other matters which might conceivably have been in issue besides that of the mere quantum of damages. The case is reported in *The Times* of 11th February.

In *Farmer* v. *Hyde* (*The Times*, 10th February), the Court of Appeal held that the report of an interruption by a stranger to an action in the course of a fair and accurate report of a case was privileged, being within s. 3 of the Law of Libel Amendment Act, 1888. The interjection was: "May I make an application? I am the Rector of Stiffkey and I want to contradict the many lies that have been told in this court." The plaintiff said that when the statement was made he was the only person who had given evidence.

In *Re All Hallows, Lombard Street* (*The Times*, 10th February), the Judicial Committee of the Privy Council, in exercise of its jurisdiction under the Union of Benefices Act, 1860, affirmed a scheme proposed by the Ecclesiastical Commissioners providing for the union of the benefices of St. Edmund the King with St. Nicholas Acons, and the benefice of All Hallows, Lombard Street, with St. Benet Gracechurch, St. Leonard, Eastcheap, and St. Dionis Backchurch, and involving the demolition of All Hallows Church and the sale of the site.

The Rules of the Supreme Court.

VII.—THE REFORM OF INTERLOCUTORY PROCEEDINGS.

A PERUSAL of the very early volumes of "Commercial Cases" and a glance through a slender and valuable monograph on the "Practice of the Commercial Court" (written, in 1902, by Mr. T. Mathew, and still of great use) will suggest the lines upon which the reform of interlocutory proceedings should be directed. Moreover, the Royal Commission on the Despatch of Business at Common Law, 1934-36, devoted a short and vigorous part of their comprehensive report (1936, Cmd. 5065), to "Reforms in Procedure" (Pt. VIII, pp. 77-86). The remarks by Mr. E. Clement Davies, K.C., M.P., in his Memorandum (at pp. 117, 118) deserve no less consideration.

Pleadings are often dispensed with or "points of claim or defence" are ordered—"to accentuate the importance of brevity and conciseness" (at p. 51 of Mr. Mathew's book). Where the facts are not substantially in dispute, a joint statement of facts may be ordered, or of admissions and contentions (at p. 46). Upon this statement, without the need for any further evidence, the case is often tried. Under Ord. XXXII there is power to follow this course; and under Ord. XXXVIIIA, r. 8 (2) (*b*), an order may be made with regard to admissions of fact and of documents and also for lists instead of affidavits of documents. But in an ordinary common law action—apart from New Procedure—one rarely hears or comes across an action tried upon admissions. Often, again, after the parties have been put to great trouble and expense in collecting evidence, judgment proceeds not so much upon the facts as upon a point of law which may well have been argued and decided as "a preliminary point of law"; the necessity for a "full-dress" trial might then have been avoided.

Some concrete examples will be of interest of the way in which interlocutory proceedings can be materially shortened. These are all to be found in Vol. I of "Commercial Cases."

1. *Trial without Pleadings.*

Order XXXIV, r. 9, provides for the trial of questions of fact—where the parties are agreed as to the questions—by consent and order of the court *without formal pleadings*. Indeed, a special and very short form is provided for this purpose: see Appendix B, No. 15 ("Annual Practice," 1937, at p. 1644). See, for instance, the first case reported in that volume (at p. ix of the Introduction), where the order made in chambers is set out in full. Manufacturers at Malines sued their agent in London for an account of the proceeds of cloth sent to him for sale in England: there was a counter-claim for damages for dismissal. Particulars of claim and counter-claim were ordered and admissions of material facts were made: *La Société, etc.* v. *Perron*. In *Petersen* v. *Dunn* (1895), 1 Com. Cas. 8—a claim for demurrage—Mathew, J., said (at p. 10):—

> "In this case a note was made at chambers of the contentions on one side and the other, and upon this note, without pleadings or formal admissions, the case has been argued."

In *Laing* v. *Union Marine Insurance Co.* (1895), 1 Com. Cas. 11, the point at issue was, whether there was a duty, under a policy of marine insurance, to disclose a dangerous port. The solicitors to the parties stated the nature of the dispute; it was agreed that the defendants' solicitors should write a letter to the solicitors for the plaintiff in the terms of a note taken by the learned judge. The case was ordered to be entered forthwith for trial, without pleadings. Again, in *Union Marine Insurance Co. Ltd.* v. *Borwick* (1895), 1 Com. Cas. 87, the question was, whether the striking of a ship upon the "toe" of a breakwater was a "collision with a pier or similar structure." An order was made for immediate trial without pleadings or other interlocutory proceedings. In yet another case—a claim for freight on the whole vacant space of a ship—Mathew, J., declared:—

> "I am happy to notice that there are no pleadings in this case, and very little expense has been incurred in preparing for trial": *Potter* v. *New Zealand Shipping Co.* (1895), 1 Com. Cas. 114 (at p. 119).

Lord Esher, M.R., stated elsewhere, in his exuberant and forthright manner, the object and the result of such a procedure:—

> "One of the great means whereby litigation might be cheapened and quickened was to do away with those preliminary opportunities for the wasting of time and money, to get rid of pleadings, with all the necessary delay that pleadings involve, delay which seems to be inveterate in solicitors' offices, and to make the parties state under the direction of the judge what was the real question at issue between them": *Hill* v. *Scott* (1895), 1 Com. Cas. 200 (at p. 204).

In his hope of dispensing with pleadings entirely, no doubt he went too far—as also in the universal cause to which he attributed the law's delay!

2. *Trial of a Preliminary Point of Law.*

In *Chartered Bank of India, etc.* v. *Macfadyen* (1895), 1 Com. Cas. 1, the parties having made admissions for the purpose of a preliminary hearing, certain points of law arising out of the construction of a letter of credit were set down for decision before the trial of the issues of fact. In another case, the question whether the exceptions in a bill of lading controlled the warranty of seaworthiness was ordered to be tried in the first instance, in *The Maori King* (1895), 1 Com. Cas. 104. There, cargo had been damaged by the breakdown of the refrigerating machinery, and the question was: Were the owners of the ship protected? In *Chippendale* v. *Holt* (1895), 1 Com. Cas. 197, the construction of the words in a policy of re-insurance, "to pay as may be paid thereon," was set down for trial as a preliminary issue. Similarly, the question whether an insurance company was relieved of liability if the vessel, at the time of the fire, was already a constructive total loss, was argued as a preliminary point in *Woodside Co.* v. *The Globe Marine Insurance Co.* (1895), 1 Com. Cas. 237.

All these cases—it may justly be said—are all "commercial causes"; yet the principle of having a preliminary issue tried is universal and is applicable to all types of causes. It is frequent in the Chancery Division and is not unusual in the Probate, Divorce and Admiralty Division of the High Court.

3. *List of Documents.*

These were ordered in an action to recover under a fire insurance policy: *The Sulphite Pulp Co. Ltd.* v. *Faber* (1895), 1 Com. Cas. 146. The power recently granted by Ord. XXXVIIIA, r. 8 (2) (*b*), to the judges in charge of the New Procedure List deserves to be made universally applicable.

4. *Admissions.*

A claim for a total loss of freight, the cargo being dates, which were condemned as unfit for human food by reason of the submersion of the ship, was tried without pleadings and upon admissions: *Asfar* v. *Blundell* (1895), 1 Com. Cas. 71. See also *Bensaude* v. *Thames and Mersey Marine Insurance Co.* (1895), 1 Com. Cas. 395. And again, see Ord. XXXVIIIA, r. 8 (2) (*b*).

5. *Early Trial.*

Under New Procedure a day for the trial is usually fixed: Ord. XXXVIIIA, r. 9 (1). This facility deserves to be extended to a wider circle of cases. Often an early and even immediate trial may be desired but, as a rule, each case must take its own course. Applications to expedite can be made and are, on occasion, granted; but not without inconvenience.

Here are two examples of striking expedition.

In *Raeburn & Verel* v. *Burness* (1895), 1 Com. Cas. 22, the writ was issued on 18th April, an application was made

on 26th April for directions as to trial, and the trial was fixed for 7th May. The claim was for damages for breach of contract to charter a ship.

In *Anderson* v. *The English Shipping Co. Ltd.* (1895), 1 Com. Cas. 85, an application was made for the immediate trial of the action in order that a difference as to the forms of the bills of lading should be terminated. The ship was almost loaded and she was to sail the following day. By consent, it was ordered that the case should be heard the next day.

Such expedition could only be possible if there were a system of various lists with judges assigned to each list. Nevertheless, it ought to be easier than is the case at present to obtain an early date in the ordinary list.

All these examples of simplification—it might again be objected—are taken from a specialised type of case, viz., commercial causes and, moreover, are over forty years old. But the problem has not changed: it has, with the years, become more acute. That this is true is abundantly borne out by the report of the Royal Commission on the Despatch of Business at Common Law, written as recently as last year.

Reforms Suggested by the Royal Commission.

The Royal Commission had recourse to the results of various inquiries. No less than seventy-one witnesses were heard, including judges of the High Court, Lords Justices of Appeal and Lords of Appeal. The Bar was heard; representatives of The Law Society and provincial Law Societies gave evidence, as well as other distinguished solicitors and members of leading commercial organisations. The reforms in procedure suggested, therefore, were put forward with responsibility and not without authoritative evidence or a long period of careful thought.

An enlarged summons for directions was recommended. The object would be—

> "A general stocktaking of the case with the object of aiming at the essentials of the dispute and arranging for trial of the necessary facts in the shortest and cheapest manner." (At p. 79 of Cmd. 5065.)

The Master's function at present is really to implement the reasonable wishes of the parties. It is suggested that he "intervene actively" and urge the parties to be "reasonable and accommodating": any unreasonable conduct should be penalised later by way of costs. The summons should be heard after pleadings and lists of documents have been exchanged and "a fairly complete set of papers" have been placed before counsel (at p. 80). The Master should endeavour to get the parties to admit facts not in dispute and to abandon speculative allegations. He would also make any order for the proof of facts—e.g., by affidavit, as under Ord. XXXVIIIA, r. 8 (2) (*j*)—otherwise than by oral evidence in court. The length of the trial would, at this stage, be estimated. This enlarged summons for directions would require a considered, rather than a summary hearing, as at present. More use would be made of Ord. XXXII, r. 4, under which admissions may be asked for; the Master would report to the judge any unreasonable conduct on the part of any of the parties, and the judge should be "firm in penalising unreasonable conduct in procedure whatever the decision on the merits" (at p. 81).

As for the formal proof of documents, the recommendation of the Commission was that after notice to admit, a party desiring to dispute the authenticity of a document should be obliged to challenge it specifically within a fixed period (at p. 83). In the first instance, discovery should be by lists of documents; if, however, a party were deliberately withholding documents, an affidavit should be ordered.

In "running down" cases—which, at present, constitute no less than two-thirds of the New Procedure List and one-third of the total number of King's Bench actions—it is suggested that a document be filed, corresponding to the "Preliminary Act" of the Admiralty Court. In these cases, both the statements of claim and the defence have become formal and stereotyped documents, thus defeating the whole object of pleadings. The "Preliminary Act"—which would not be a formal admission—would be filed before pleadings in a sealed envelope: "a statement of the main facts of the accident, its time, place, the relative position of the vehicles, their speed and distances, etc." (at p. 84). After pleadings the envelopes would be opened and copies exchanged. By this procedure speculative claims would be discouraged and actions might be withdrawn or settled before costs had been extensively incurred.

Mr. Clement Davies, K.C., in the reservations made in his memorandum, took the view that interlocutories should be heard not by Masters, but by the judges in charge of a particular list. "The firm handling of a case by a judge in its early stages," he thought, would reduce the number of interlocutory applications, and materially shorten the trial of an action. The practice as to interlocutories he would assimilate to the procedure in the Commercial and New Procedure Courts (at p. 117). If, however, interlocutories were to remain in the hands of the Masters, a group of Masters—as in the Chancery Division—should be attached to each of the lists, thus working in harmony with the judge who would try the case (at p. 118). In any event, the matter should be placed before the Rules of Court Committee of the High Court for their "considered opinion."

Upon the urgency of this need for reforms in procedure the whole Commission was agreed. The reform of interlocutory proceedings is probably the most fundamental of these, for this is the pivot around which the length and conduct of a trial revolve. The game of interlocutories has become too long, too complicated and costly; it needs to be replaced by a new technique resembling that which is used with effect in the "Commercial Court," and under the New Procedure Rules. Not how many applications, but how few, should be the question; how short, not how long, the lapse between writ and trial; the ends desired are the simplicity and the cheapness of proof.

The reform of interlocutory proceedings—we say it with becoming respect—deserves the immediate consideration of our vigorous Lord Chancellor, now happily restored to health.

(*To be continued.*)

Company Law and Practice.

Subscribers of a Memorandum.

"Any seven or more persons, or, where the company to be formed will be a private company, any two or more persons, associated for any lawful purpose, may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company with or without liability."

My text this week is the familiar first words of the first section of the Companies Act, 1929, and in going back to the beginning of the Act we go back to the genesis of a company. I propose to examine some of the authorities which deal with the position of those persons who being "desirous of being formed into a company" subscribe a memorandum of association, and in the case of a company having a share capital "agree to take the number of shares in the capital of the company set opposite" their names. Section 2 of the Act requires each subscriber to write opposite his name the number of shares which he agrees to take and fixes the minimum to be taken at one share. In practice it is common to find each subscriber agreeing to take this one share only, even if he intends later to acquire a larger holding in the company, but there is no limit fixed by law to the number of shares which he may agree to take if he feels inclined to take more. Thus in *Pell's Case*, 5 Ch. 11, for instance, Pell subscribed the memorandum of association for 1,350 shares,

The act of signing a memorandum is a contractual act, and any person who can properly enter into a contract may sign. The contract, however, is of a very exceptional kind. Buckley, J., in the course of his judgment in *Lord Lurgan's Case* [1902] 1 Ch. 707, explained its origin and operation in these words: "Down to the moment when the memorandum and articles are taken to Somerset House to be registered there is no contract at all, because the corporation does not exist, and any contract by the signatories must be with the corporation. At the moment of registration two things take place by force of the Companies Act, 1862: the company springs into existence, and the subscribers of the memorandum of association become, by virtue of s. 23 of that Act [now replaced by s. 25 of the Act of 1929], members of the company. There is no executory contract which is subsequently executed. There is no contract at all until the moment when the corporation and the character of membership in the signatories to the memorandum come simultaneously into existence." One result of this is that the signatory of the memorandum cannot claim rescission of his contract on the ground of fraud. This is illustrated by *Lord Lurgan's Case*, *supra*, where the signatory alleged that he had been induced to subscribe the memorandum for 250 shares by misrepresentations made to him by a promoter of the company. Assuming this fact to be true, he was nevertheless without a remedy against the company, for the promoter could not before the incorporation of the company be an agent of the company, and the company could not, therefore, be a party to any fraud committed by the promoter. As with rescission, so with release. A company after its incorporation cannot release the signatories of its memorandum from the liabilities imposed on them by their contracts. Even if no shares are allotted to them, and the company has resolved that none shall be allotted, they remain liable as members of the company, and may be put on the list of contributories in a liquidation: *In re London and Provincial Consolidated Coal Company*, 5 Ch. D. 525. This case makes it quite clear that in the normal course the only way in which a subscriber can avoid his liability is by taking up the shares and then disposing of them by transfer, surrender or otherwise. I say "in the normal course" because there may sometimes occur a case in which the subscriber is relieved of his liability without any action on his part. This where all the shares originally issued are taken up by other persons and there are no shares left to be allotted to the subscribers. It is only equitable that the liability should be counterbalanced by some possible advantage, and where the subscriber was never given an opportunity of taking up his shares, even had he wished to do so, he cannot afterwards be put on the register of members or on the list of contributories, and if his name is included in the register or the list he may have it removed. All the shares allotted must, however, have been finally allotted and not merely allotted subject to confirmation, for if this confirmation is not forthcoming the shares remain unallotted and the subscriber's liability is not extinguished: see *Evans's Case*, 2 Ch. 427. But once all the shares are finally allotted the liability is extinguished for ever, and it will not revive even if shares subsequently become available: *Mackley's Case*, 1 Ch. D. 247. In that case all the shares in a company were originally allotted to persons other than M, who was a subscriber of the memorandum of association for fifty shares. Five years later a number of shares were forfeited for non-payment of calls, and after a further few years the company went into liquidation, and the liquidator placed M's personal representative on the list of contributories in respect of fifty shares. The forfeited shares had never been re-allotted. On a summons to remove M's personal representative from the list Malins, V.-C., observed that "if the shareholders intended to look to Mr. M, they should not have allotted the shares to other persons," and there being "no shares which Mr. M could have had if he had wanted them [i.e., at the date of the original allocation of the shares] the company were not in a position to say that they would continue to hold him liable for the shares for which he had signed." In my view, the grounds for the decision in *Mackley's Case*, *supra*, would apply equally in a case where the whole of the original issue has been allotted, but shares later become available by reason of an increase of capital. It must not be forgotten that the memorandum, the signing of which constitutes the contract to take shares, contains the statement that the capital of the company consists of so many pounds, divided into so many shares, and where all *these* shares have been allotted to other persons the signatory is fully and finally absolved from the performance of the contract.

As I have already said, any person who is capable of entering into a contract may sign a memorandum. Thus, in *In re General Company for the Promotion of Land Credit*, 5 Ch. 363, Gifford, L.J., said (at p. 377): "I can see no reason why foreigners should not be persons to sign the memorandum of association," and in *In re Laxon & Co. (No. 2)* [1892] 3 Ch. 555, the memorandum was signed by eight persons, of whom two were infants. These latter subsequently applied to the court to have their names removed from the register and on this being done doubts arose as to whether the statutory provisions as to the signing of the memorandum had been complied with. An infant's contract, though voidable, is, however, not void, and the infants were capable of contracting and did contract to take shares at the time of the formation of the company. The validity of the memorandum was therefore not affected by the subsequent repudiation by the infants of their contracts. But, although the existence of the company will not be prejudiced if some of the signatories of its memorandum are infants, it is in practice highly undesirable that this should be so.

One of the functions which the subscribers of the memorandum are sometimes called upon to fulfil is that of appointing the first directors of the company. The directors are often named in the articles, but where this is not the case the duty of choosing them is generally imposed on the subscribers of the memorandum. For example, Art. 64 of Table A of 1929 reads as follows:—

> "The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association."

The power conferred by this or any similar article continues in being until an appointment of directors is made and notwithstanding that the first ordinary meeting of the company may have been held without any appointment being made: *John Morley Building Company* v. *Barras* [1891] 2 Ch. 386. Stirling, J., at p. 393, says: "Have the subscribers lost the power given them by Art. 52 [the corresponding article in Table A of 1862] of determining who shall be the first directors of the company by the fact that the first general meeting has been held? I think they have not. Until an appointment of directors has been made the power given by Art. 52 remains in force . . ." In the same case it was also held that regulations concerning the summoning and holding of general meetings of the company do not apply to meetings of the subscribers and that in consequence only reasonable notice need be given of such meetings. The notice must indicate the nature of the business which it is intended to transact: *In re London and Southern Counties Freehold Land Company*, 31 Ch. D. 223, per Chitty, J., at 225. An actual meeting of the subscribers is, however, not essential. Article 14 of Table A of 1929 provides that they shall determine the names of the directors in writing. In the corresponding article of 1862 the words "in writing" did not appear, but it was nevertheless held in *In re Great Northern Salt and Chemical Works*, 44 Ch. D. 472, that an appointment in writing signed by all the subscribers without the holding of any meeting was good. The fact that the subscribers had not met together for the purpose of discussing

and arriving at their decision did not invalidate the appointment, though if the subscribers choose to act as directors then they will be under the same obligation as directors to meet for the transaction of business.

Before leaving this subject, I would like to draw attention to s. 140 of the Companies Act, 1929. The section is a long one and much of it is not relevant to the present subject, and so I do not propose to set it out here. It is concerned only with public companies having a share capital which have not been originally formed as private companies, and it forbids the appointment of a director by the articles unless, before the registration of the articles, he has among other things signed the memorandum for or given an undertaking to take up a number of shares not less than his qualification. The giving of this undertaking places him as regards those shares in the same position as if he had subscribed the memorandum for them, and all the consequences of being a signatory, some of which I have indicated in this article, will then follow.

A Conveyancer's Diary.

Future Death Duties on Settled Legacies.

I LEFT this subject last week with a reference to the important case in the Court of Appeal, *Re Wedgwood: Allen* v. *Public Trustee* [1921] 1 Ch. 601.

In that case, as in others, it was emphasised that the matter was one of construction of the particular will before the court, and Younger, L.J., dissented from the judgment of the other members of the court, taking the view that (as a matter of construction) the expression "free from all death duties" meant free from all duties which might become payable by reason of the dispositions in the will.

I must say that the well-reasoned judgment of Younger, L.J., appeals strongly to me, but the decision of the Court of Appeal holds. At the same time, it is hardly conclusive or binding, because both Lord Sterndale, M.R., and Warrington, L.J., were careful to say that the whole question turned upon the construction of the will then before the court.

Whilst that is so, there is no doubt that where somewhat similar language is employed in any subsequent case, the construction adopted by the Court of Appeal in *Re Wedgwood* will be followed despite the closely-reasoned and, as I venture to think, the perfectly logical judgment of Younger, L.J.

I may now refer to some of the later cases. In *Re Fenwick* [1922] 2 Ch. 773, a testator who died in 1912 appointed Lloyds Bank Ltd. to be his executor and trustee, and gave certain shares in Lloyds Bank Ltd. to the bank "Upon trust to sell so many of such shares as shall be sufficient to pay all my debts and funeral and testamentary expenses . . . and all duties of every description (including settlement estate duty where payable) to which my estate both real and personal or any part thereof shall be liable and subject to such payments in trust for my son absolutely," and he devised and bequeathed his residuary real and personal estate to his trustees free of all duties upon trust to pay the income thereof to his wife during her life and after her death in trust for his daughters for their lives with trusts to take effect after his daughters' deaths, which are not material.

It was held by Sargant, J., that the duties which became payable upon the deaths of the testator's daughters were not payable out of the proceeds of the sale of the shares, but must be paid out of the residuary estate.

In that case the learned judge certainly relied upon the construction of the will before him to a great extent, but it would appear that in arriving at the decision to which he came, he was largely influenced by considerations of convenience. His lordship said: "Further there is this to be noted, and I attach considerable importance to it, that the shares in question are shares on which there is a very large liability. If the duties that were payable were to extend to all duties that might thereafter become payable and were not duties ascertainable immediately or within a very short time, the result would be that under the provisions of the will, all the shares in Lloyds Bank . . . would have to be held by the trustees with this liability upon their shoulders. I should think there are very great objections to Lloyds Bank themselves as trustees holding the shares of Lloyds Bank."

I do not think that this case carries us any further. Whatever objections there might be to Lloyds Bank Ltd. holding shares (as trustees) in its own company, the position which arose was created by the testator himself, and I am unable to see what bearing that can have, as a matter of construction, upon the question as to whether the settled shares or the proceeds of sale thereof on the one hand or the residuary estate on the other hand should bear the burden of estate duty arising in the future on the death of any person entitled for life to the income derived from such shares or the proceeds of sale thereof.

In *Re Duke of Sutherland: Chaplin* v. *Leveson-Gower* [1922] 2 Ch. 782, the facts were that a testator bequeathed a sum of £150,000 to trustees upon trust for his son for life, and subject thereto upon trust for the issue of his son. He bequeathed the residue of his personal estate to his trustees upon trust for conversion with power to postpone conversion. The testator declared "that all legacies and annuities and all other gifts, bequests and devises herein contained shall be free from all death duties . . . And I direct that such death duties shall be paid out of my residuary estate." By a further clause in his will the testator directed his trustees out of the moneys to arise from the conversion of his residuary personal estate to "pay any funeral and testamentary expenses, debts, the legacies and annuities bequeathed by this my will or any codicil hereto and the death duties whether payable in respect of my estate . . . or of any of the legacies or annuities bequeathed free of legacy duty." The testator died in 1913. His son died in 1921.

It was held that the estate duty payable under the Finance Act, 1914, on the death of the son in respect of the £150,000 fund was payable out of that fund and not out of residue.

That decision of course followed *Re Wedgwood*.

Another case to which I may refer is *Re Sarson* [1925] Ch. 31.

In that case a testator who died in 1913 settled a terminable rentcharge on his son and his son's widow successively for life and after the death of the survivor of them in trust for their children. There were other bequests and the testator bequeathed the residue of his estate to the Public Trustee upon trust for conversion and investment. The testator directed the payment of an annuity to his wife and settled certain legacies to be set aside out of the residue. The testator then directed that "all legacies, devises and bequests shall be free of all duties, and that all estate, settlement, succession, legacy and other duties in respect of any of my property (real or personal) including the duty, if any, on any gifts made by me in my life shall be paid out of my residuary estate." The testator died in 1913.

It was held that the future estate duty payable in respect of the settled rentcharge and the settled legacies was not payable out of residue but out of the settled rentcharge and legacies respectively.

In that case Eve, J., was careful to base his decision upon the construction of the will before him and the presumed intention of the testator, but he seems to have relied upon what he called the "rule enunciated in *Re Wedgwood*."

There are other authorities, but I do not think that I need refer to them. The net result appears to be that if a testator wishes to throw the burden of estate duty payable in the future in respect of settled legacies on the death of a life tenant, he should specifically say so and not rely upon a general clause, however widely it may be expressed, throwing or purporting to throw the burden of such duty upon his residuary estate or otherwise in relief of the settled fund.

Landlord and Tenant Notebook.

Third Parties and Distress.

The law governing the rights of persons not parties to a tenancy whose goods have been distrained by the landlord presents an unwieldy mass of rules, exceptions, exceptions from exceptions, and provisoes. A practitioner asked off-hand whether protection could be claimed for furniture belonging to the wife of the sole director of a "one-man" company, in the case of a house and shop let to the company and used, as to the house part, as a residence by the said director, might well ask for a little time in which to consider his answer. It would be neither possible nor desirable to discuss, in an article, all the details of the position brought about by the Lodgers' Goods Protection Act, 1871, and the Law of Distress Amendment Act, 1908; but a survey of the general and guiding principles which underlie those enactments may usefully assist towards understanding them.

The right of distress was originally a right to seize and hold goods found on the demised premises from which rent, in theory, issues. As long as there was no right of sale, there was little temptation to seize the property of third parties. The right of sale was conferred by the Distress Act, 1689.

That Act was described by Baron Bramwell as "harsh"; but as judicial criticism is, unfortunately, less often the *causa causans* of amendments of the law than are ridicule and contempt expressed in writings of novelists, I may remind readers that the position obtaining attracted the attention of Mr. Charles Dickens on at least two occasions. One of Mr. Micawber's letters to David Copperfield was "penned within the personal range of . . . an individual in a state closely bordering on intoxication" whose "inventory included not only the chattels and effects belonging to the undersigned . . . but also those appertaining to Mr. Thomas Traddles, lodger, a member of the Honourable Society of the Inner Temple." Mr. Skimpole's reaction to a similar experience was as follows: "The oddity of the thing is that my chairs and tables were not paid for, and yet my landlord walks off with them as composedly as possible! Now that seems droll! . . . The chair and table merchant never engaged to pay my landlord my rent. Why should my landlord quarrel with him?"

The position was dealt with, not by repealing s. 2 of the Distress Act, 1689, but by conferring conditional protection on certain of the goods of certain classes of third parties.

It should be noted that while the first of the two measures, the Lodgers' Goods Protection Act, 1871, has been repealed "wherever and so far as this Act applies" by the Law of Distress Amendment Act, 1908, the effect of the qualifying phrase is somewhat nebulous. For the latter statute confers rights on a wider class than does the former. It has been suggested that the effect is that the exceptions contained in the 1908 Act do not affect lodgers; if this be so, it is remarkable that some of those exceptions, which affect classes of goods, themselves specify "(not being the goods of a lodger)," while others could not, by reason of their nature, affect the rights of any lodger.

It is the Law of Distress Amendment Act, 1908, which has given rise to most problems. In its first section it divides those who are to benefit into three groups; undertenants paying the full value of their holdings at rents payable not less frequently than quarterly; lodgers; and other persons provided they are not beneficially interested in the tenancy. This is the effect of the provision. It seems clear that the whole object of the distinction is to deny protection to undertenants acting in collusion with mesne tenants. But why an honest sub-tenant whose rent is payable monthly or half-quarterly should remain subject to the old "harsh" law is difficult to see. Another criticism is that the section speaks of "liable to pay by equal instalments . . . a rent": the word "instalment" should not be applied to rent.

The scope of the enactment is next narrowed in s. 4; this time by reference, in form, to goods, not persons. There are two main groups of goods, the second divided into four sub-groups. On each occasion, the word "goods" is followed and qualified by some phrase expressing either ownership ("belonging to," or "of") or physical situation ("upon premises where," or "in the offices of"), or both ownership and physical situation, or physical control.

Thus the Distress Act, 1689, continues to apply to goods belonging to the husband or wife of the tenant whose rent is in arrear, and to goods of a partner of the immediate tenant. If deliberate distinctions between "belonging to" and "of," and between "the tenant whose rent is in arrear" and "the immediate tenant," were intended, they are too subtle for me. The double qualification is applicable when the tenant is a director, officer or employee of a company or corporation, and the goods seized belong to and are *in the offices of* that company or corporation. While goods excluded from the new statute by virtue of some "control" qualification are goods comprised in hire-purchase agreements, settlements, bills of sale and goods in the possession, etc., of the tenant by the consent of the true owner under such circumstances that the tenant is their reputed owner.

It would again seem that the object is to prevent collusion to the disadvantage of landlords, who might otherwise be deceived by the apparent wealth displayed by their tenants. Of course, some anomalies have resulted. Even those who hold the most advanced views on the relations of the sexes would hardly rejoice in the rule which protects the property of a mistress and denies protection to that of a wife. One sees why the property of a company occupying offices held under a tenancy agreement with a director should be excluded; but if the holding includes living accommodation the company may be clever enough to shift its property when the tenant's rent is in arrear. The hire-purchase traders have complained of the risk they continue to incur, and have achieved some measure of success in their efforts to avoid it by means of a self-determining agreement. But, on the whole, the object has been achieved, and the right of sale introduced by the 1689 statute continues to apply to goods of third parties whose interests are closely associated with those of the tenant or who entrust them to his control with their eyes open.

To take the three examples mentioned earlier in the article. The case of the furniture owned by the wife of the sole director of a "one-man" company, situated in the residential part of a building let to the company, was based on actual facts. The owner is not beneficially interested in the tenancy, the company is not their reputed owner, and protection can be claimed. If the landlord had taken advice when granting the tenancy, the company and its director would have been made joint tenants, and the lady's furniture would be liable to seizure and sale. Of the two Dickensian cases, that of Mr. Thomas Traddles is clearly covered by the 1871 and 1908 Statutes. In the case of Mr. Skimpole, the presumption is that the property in the furniture passes on delivery (Sale of Goods Act, 1893, s. 18 (2)), so the position would still seem droll to him.

It must be remembered that the protection conferred by the Acts differs in some important respects from privilege from distress as known to the common law. The landlord's rights under the Distress Act, 1689, operate until the service of the declaration prescribed, and the authorities show that strict compliance with this requirement, which demands a certain amount of labour, is a condition of protection.

Mr. Hubert G. Thornley, solicitor, of Northallerton, who is Clerk of the Peace to the North Riding, and Clerk to the North Riding County Council, entertained to dinner at Northallerton members of the staff of the County Council to celebrate his twenty-one years of service in the position.

Our County Court Letter.

THE CONTRACTS OF DOMESTIC SERVANTS.

We are indebted to one of our subscribers for the following amplification of the report of *Tomlinson and Wife* v. *Waite*, noted at 81 Sol. J. 72: His Honour Judge Konstam, K.C., found as a fact that all sums owing in respect of the cooking and of the keep of the dog and chickens had been paid for in 1933, and that the laundry had never been done as claimed, or at all. The learned judge further found as a fact that there was an express arrangement that the male plaintiff was to reimburse himself for his expenses from the proceeds of the sale of the pony, but that the defendant had only received the purchase price from the purchaser subsequent to these proceedings being started. The learned judge accordingly gave judgment for the defendant, with costs, subject to her paying (by consent) one guinea for the keep of the pony.

THE REMUNERATION OF PILOTS.

In a recent case at Hull County Court (*Humber Conservancy Board* v. *W. A. Massey & Sons Limited*) the case for the plaintiffs was that, in three out of seven instances, ships had taken on board pilots at the mouth of the Humber, and came up the river bound for the Old Harbour. On their arrival at the mouth of the harbour no berth was available, and they had to wait in the roads for the next high tide. In each case the pilot left, and another pilot took the vessel into the Old Harbour when a berth was empty. The taking on of another pilot, at the next high water, constituted a second service. In the other four (out of the seven) cases, pilots were engaged to take outward-bound vessels to sea, but in three cases the ships called at the Hull and Barnsley Jetty, while the fourth ship called at the Salt End Jetty. It was again contended that two services had been rendered, and in each case the amounts claimed were £3 0s. 4d. and £1 10s. 1d., of which only the £3 0s. 4d. had been paid. The defence was that, if a master of an outward-bound vessel asked to be taken to sea, via a jetty, this was a request for a single service. In the case of inward-bound vessels the matter was even more clearly a single service. His Honour Deputy Judge Perks held that a pilot was only bound to take an inward-bound vessel in on the tide, and, if missed, it was not in his bargain to take the ship in on the next tide. In the three cases of the inward-bound vessels, there was accordingly a fresh bargain. In the cases of the outward-bound vessels, if the master said he wished to go to sea, via the jetty, this might be a device to evade the charge. Judgment was accordingly given for the plaintiffs, with costs.

FOREIGN BODIES THROUGH WINDSCREENS.

In the recent case of *Holland and Another* v. *Heaton*, at Manchester County Court, the claim was for damages for negligence. The plaintiffs were bookmakers, and had been in the habit of going to race meetings in the car of the defendant, who was a taxicab proprietor. On the 16th October, 1936, the plaintiffs were riding in the car when there was a sound like an explosion, and a pheasant came through the windscreen, which was not made of safety glass. The plaintiffs, being cut by broken glass, were unable to attend race meetings for three weeks. The alleged negligence was that the defendant had been driving too fast, and one of the plaintiffs had complained of his speed. The defence was that the taxicab was in a reasonably safe condition, as safety glass was not compulsory at the date of the accident, and the flying of a pheasant through the windscreen was not an ordinary contingency. His Honour Deputy Judge Jalland observed that the defendant had submitted the safety of six passengers to a motor car which was not fitted with safety glass, and had driven it at a high speed. The plaintiffs were entitled to damages, and judgment was given in their favour for £35 15s. 6d. and £25 13s. 6d. respectively, with costs.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

OLD AGE PENSIONERS AND COMPENSATION.

In *Horn* v. *Southern Railway Co.*, at Exeter County Court, an award was claimed of £300. The applicant's case was that her late husband was a platelayer, and had had an accident in December, 1930, while loading a van with sleepers. His wages had been £2 11s. 4d. a week, and he received 25s. 8d. as compensation during each of the three weeks he was away from work. There was no further interruption of work, but in November, 1935, the deceased was compulsorily retired at sixty-five, and he received a voluntary pension of 3s. a week, in addition to his own old age pension and that of the applicant. The deceased only obtained other employment once, and he died in May, 1936. A claim for compensation, in respect of diminution of earning capacity, was then pending, and the deceased had in fact agreed to accept £30 in settlement. The applicant would not attempt to enforce this agreement, as the deceased had died through collapse under an operation for strangulated hernia, traceable to the accident in 1930. The respondents denied liability, as any diminution in earning capacity was not due to the accident, but to the fact that the deceased was past work. His Honour Judge Wethered held, however, that the deceased would have succeeded in getting work, although it might not have been continuous, nor the wages large. An award was made of £200 with costs, subject to a stay of execution.

SUSCEPTIBILITY TO NYSTAGMUS.

In *Lloyd* v. *Conduit Colliery Co., Ltd.*, at Walsall County Court, the applicant's case was that, having worked as a stallman for thirty years, he ceased work in May, 1936, owing to eye trouble. The certifying surgeon gave a certificate that the disease was nystagmus, but the medical referee allowed an appeal—adding that he considered the applicant had had nystagmus (probably brought on by two previous accidents) and that there was increased susceptibility, having regard to the previous attack. The applicant's case was that susceptibility, in law, was part of the disease itself, as it meant that the man had not completely recovered, and was therefore still suffering from the disease. The respondents contended that there was not in fact in existence any valid certificate of disablement, which (in the absence of an admission by the employers) was a condition precedent to liability. Although the medical referee had said that the applicant had had nystagmus, this did not imply that he was still recovering from it, as there was no previous certificate to form a basis for proceedings. In all the cases dealing with recrudescence there had been a previous certificate, which was missing in the present case, and this was a fatal objection. His Honour Judge Tebbs upheld the submission for the defence, and judgment was given for the respondents, subject to a stay of execution for twenty-one days.

CONJUNCTIVITIS NOT AN ACCIDENT.

In *Rivoli* v. *Earl of Dudley*, at Westminster County Court, the applicant's case was that he had been a chef in the yacht "Anna Maria." While cruising in 1935, a flash from the galley stove had caused the applicant's eyes to water, and this was found to be due to the right tear duct being blocked, as a result of which tears ran down the cheeks. These tears fell on to food, in course of preparation, and the applicant was unable to earn his living as a cook—the only occupation open to him in this country. The respondent's case was that the applicant's incapacity was not due to an accident, but to conjunctivitis. The late Judge Harington considered that the applicant's emotions would have been roused in cross-examination, but there had been none of the alleged continual tears. Although the applicant had suffered discomfort and inconvenience, his earning capacity was not affected. No order was therefore made.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

English Real Estate—Re-sealing of Scottish Grant.

Q. 3415. When examining an abstract of title with regard to property in England, it is disclosed that the previous owner of this property died intestate in 1922, domiciled in Scotland. A petition was made before the Sheriff's Court for appointment of executors dative *qua* next of kin of the testator, and the abstract continues "A & B executors dative *qua* next of kin to the testator." The next deed has a confirmation reciting the decree which was duly sealed in the Principal Probate Registry. As the Scottish Law is not very familiar to me I shall be glad if you can inform me that the executors dative are the persons legally entitled to convey the property, and that all the formalities have been complied with.

A. The only persons who can make title in right of a deceased owner of English land are persons who have obtained a grant as personal representatives in England, but, contrary to what was previously laid down in the text books, it was decided in *Re Howden & Hyslops Contract* [1928] Ch. 479, that the resealing of a Scottish grant in England was effective as to real, as well as personal estate, to enable the Scottish executors to make a title to English land. Section 168 of the Supreme Court of Judicature Act, 1925, in which this decision depends, only refers to Scottish *executors*, because in Scotland, in the case of intestates or testators who have not appointed executors, persons are appointed by the court as executors, and are called executors dative and not administrators.

Assuming the statements and recitals are correct, the executors dative with a resealed grant can convey.

Settled Leaseholds—Liability for Repairs.

Q. 3416. In 1863 a lease of a house and shop was granted by the corporation for seventy-five years to B. There were several assignments of this lease, and, finally, C acquired the residue of the unexpired term in 1921. C died, having devised his real and personal estate to E and F upon trust for his widow, G, for life. G has now received notice from the corporation requiring her to execute repairs in accordance with a schedule of dilapidations, to comply with the repairing covenant in the lease of 1863. We shall be glad if you will indicate whether the cost of complying with the corporation's notice to repair will fall upon the trustees of the will of C or upon G personally.

A. There does not appear to be any authority on this point since the 1925 legislation, though there are several on the question of repairs, where property was left under trust for sale. G is now, if a vesting assent has been executed, or if C died before 1926, directly liable to the landlords in the covenants in the lease. In view, however, of the decisions in *Re Courtier, Coles & Courtier* (1887), 34 Ch. D. 136, *Re Betty, Betty* v. *A.-G.* [1899] 1 Ch. 821; *Re Gjers, Cooper* v. *Gjers* [1899] 2 Ch. 54, it is considered that the law may be properly stated as being that the trustees, as executors, should have made good dilapidations existing at C's death (at any rate to the extent of avoiding a possibility of forfeiture), but that as to all wants of repair that have arisen since that date, G as tenant for life is clearly liable. It is, of course, assumed that there are no directions in the will as to cost of repairs.

Deceased's Estate Administered in Bankruptcy—Disclaimer of Lease.

Q. 3417. In October, 1935, two building leases were granted by our clients to X, under which X was required to build a certain number of houses before March, 1936. X died in April, 1936, without having started any building. Mrs. X took out letters of administration to his estate in June, 1936, but on 12th August, 1936, an administration order in bankruptcy was made. We are considering serving on the Official Receiver (who is acting as trustee) a notice to disclaim these two leases, and it appears to us that if the trustee disclaims there would not be any necessity to obtain vesting orders, as there are no underlessees or mortgagees of X in whom the terms under the leases could vest. We shall be glad to know whether you consider it would be safe for our clients to rely on the disclaimer alone and to re-let the land without obtaining vesting orders.

A. It is assumed that X has not sub-leased, assigned or mortgaged the leases. If this is so, a disclaimer properly carried out under s. 54 of the Bankruptcy Act will determine the rights and interest of X and, of course, of his administratrix. No vesting order will be required as the leases will cease to exist. If the lessor preferred to have a formal surrender, it is probable that, in consideration of the lessor not claiming to prove against the estate, the Official Receiver would execute a surrender. The disclaimer, however, would be equally satisfactory provided the lessor is satisfied that there is no person claiming under X.

Workman's Operation.

Q. 3418. A client of ours is in receipt of partial compensation from his employers under the Workmen's Compensation Act. At present his condition is such that he is entitled to a larger sum for compensation than that received, as he now suffers from a crepitation in the right shoulder joint which his doctors state is a condition resulting from his accident. The doctors also state that this condition could be cured by an operation. Our client is not in a position to pay for an operation and accordingly we have written the employers suggesting that they should pay for the operation or, in the alternative, that we intended to claim an increase of compensation on the ground that the man's incapacity is greater than before and that such incapacity is directly due to the accident. The employers have refused to pay for the operation. Can the workman claim an increase in compensation owing to his greater incapacity, although this could be cured by an operation? We can find no authority in the Act or in any of the decisions on the Act either way.

A. An application should be made for an increase in compensation. If the employers then object to paying such increase, it will be for them to remove the cause of the greater incapacity by paying for the operation. The authorities are all to the effect that compensation may be reduced or terminated in the event of a refusal to undergo an operation. The absence of authority on the converse position is that employers (or their insurance companies) are usually anxious to terminate the incapacity by means of an operation. In the present case, there may be a conflict of medical evidence as to the extent of the incapacity, and whether it would be affected by the proposed operation.

To-day and Yesterday.

LEGAL CALENDAR.

8 FEBRUARY.—In 1806, Thomas Erskine, then at the zenith of his career as an advocate, made the blunder of grasping the glittering prize of the Great Seal, an error of judgment which brought him a year's eminence on the Woolsack and a life of dignified obscurity for the rest of his days. On the 8th February, the Bar met in the Court of King's Bench and resolved to send the new Chancellor a congratulatory address "expressing the deep impression made upon us by the uniform kindness and attention which we have at all times experienced from him during his long and extensive practice amongst us."

9 FEBRUARY.—On the following day, the 9th February, Lord Erskine sent a graceful reply. He wrote: "I came originally into the profession under great disadvantages. Bred in military life, a total stranger to the whole Bar . . . my sudden advancement into great business before I could rank in study or in learning with others who were my seniors also was calculated to have produced in common minds nothing but prejudice and disgust. How, then, can I look back without gratitude upon the unparalleled liberality and kindness which for seven and twenty years I uniformly experienced among you?"

10 FEBRUARY.—Sir Thomas Platt, formerly a judge of the Court of Exchequer, died on the 10th February, 1862, five years after his retirement from the Bench. He was not a deeply learned judge, but his blunt courtesy, amiable character, good sense and humour made him popular. The great Lord Brampton. who joined the Home Circuit just early enough to see him at the Bar, has left us a lively sketch of his style of advocacy. "He loved to amuse, especially the junior Bar. He was a good natural punster, endowed with a lively wit. The Circuit was never dull when Platt was present . . . He loved popular applause."

11 FEBRUARY.—On the 11th February, 1798, James Bacon was born. His father was a conveyancer, so he was nurtured in the very bosom of the law, whose development he was to watch for ninety-seven years. He saw the inauguration of the office of Vice-Chancellor, and lived to be the last to hold the title after the Judicature Acts had levelled the distinctions between the judges. He was over seventy when he accepted judicial office, and survived, not only to enjoy it for full fifteen years, but also to retire full of health and vigour.

12 FEBRUARY.—In 1814, there was an angry scene in the Four Courts at Dublin between Counsellor Hatchell, a barrister, and Mr. Moreley, an attorney, over a report of a case in which they had both been engaged. Words led to blows and blows to a challenge. On the 12th February, they met at Sandymount. The attorney fired first without effect. Then the barrister fired, and his shot hit his opponent on the hip and pierced his kidneys, killing him instantly.

13 FEBRUARY.—George Jessel, son of Zadok Aaron Jessel, a substantial Jewish merchant of London, was born on the 13th February, 1824. He was educated at Mr. Neumegen's school for Jews at Kew, and at University College, London. He embraced the profession of the law and was called to the Bar at Lincoln's Inn in 1847. His fees in his first year amounted to fifty-two guineas, and it was not long before he was making £1,000 a year. At the end of his career his income was more than twenty times that amount. In 1873, he became Master of the Rolls, establishing himself as one of the greatest judges of his time.

14 FEBRUARY.—John Gurney, son of Joseph Gurney, an eminent shorthand writer, was born on the 14th February, 1768. He became a Baron of the Exchequer.

THE WEEK'S PERSONALITY.

For the fraternity of shorthand writers, the memory of Mr. Baron Gurney should be sacred. His father and grandfather developed shorthand into a practical system and gave the art an established position in official proceedings. It was, indeed, while accompanying his father into court that he was drawn to the practice of the law, and after he became a judge he did not forget the utility of shorthand, and was the first occupant of the Bench to use it for the purpose of taking down the evidence given before him. It was noted that he read it over when he had occasion to refer to it with as great ease as if he were reading a printed copy. Here is a contemporary sketch of him: "His decisions have given great satisfaction: indeed, he is equally regarded by the Bar and the public as an excellent judge. He is quite a religious man. He belongs to the Baptist denomination, and has for a long period been a member of the Maze Pond Chapel in the Borough . . . If I am not mistaken, he is a deacon in the church meeting in that place . . . He is a man of excellent private character as well as of unimpeachable integrity in the public relations of life."

"PROBOSCIS *v.* PROBOSCIS."

Should the great case of the paint smells in the hat-shop which Charles, J., who tried it, called "Proboscis *v.* Proboscis," come to be reported in any up-to-date and all-embracing series of reports, the expert evidence will surely be a prominent point. In particular, posterity should not forget the analytical chemist called to describe those smells, who not only claimed to possess a chemist's nose, but confessed, in answer to the learned judge's question, that it was the very one he was then wearing—a nose capable of singling out a single smell from a compound of three or four, when the ordinary untrained nose of the layman would catch only the combined effect. It must surely have been properties such as this that Vice-Chancellor Bacon had in mind when, in an action in respect of nuisance by smell, the only notes which he sent to the Court of Appeal consisted of a clever sketch of the defendant's nose, an imposing and monumental organ, with the words: "He says he did not smell it—with such a nose!"

A SUBTLE ANALYSIS.

One feels that Charles, J., would greatly have enjoyed presiding over that case which Lord Brampton listened to as a young man, and which arose out of a nuisance caused by a malodorous tank into which much refuse had been thrown. One of the plaintiff's witnesses was a respectable but ignorant workman whom Mr. Platt, afterwards a judge, proceeded to cross-examine with grotesque humour. The witness had said that some of the smells were like paint. Platt: "You are aware, as a man of undoubted intelligence, that there are various colours of paint. Has this smell any particular colour, think you?" Witness: "Well, I dunnow, sir." Platt: "I see. But what do you say to yellow? Had it a yellow smell, think you?" Witness: "Well, sir, I doan't think ur wus yaller, nurther. No, sir, not quite yaller. I think it was moore of a blue like." Platt: "A blue smell. We all know a blue smell when we see it. Now let me ask you: there are many kinds of blue smells, from the smell of a Blue Peter, which is salt, to that of the sky, which depends upon the weather. Was it dark or—" Witness: "A kind of sky-blue, sir." Platt: "More like your scarf?" Witness (feeling the scarf): "Yes." Even analytical chemistry could go no further.

The University of London announces that a Lecture on "Les Origines Canoniques des Droits Occidentaux" will be given at University College, London, Gower Street, W.C.1, by Professor G. le Bras, Professor of the History of Canonical Law in the University of Paris, at 5.30 p.m., on Monday, 8th March. The Lecture, which will be delivered in French, is addressed to students of the University and to others interested in the subject. Admission free, without ticket.

Notes of Cases.

Judicial Committee of the Privy Council.

Sockalingam and Another *v.* Ramanayake and Another.

Lord Maugham, Lord Salvesen and Sir Lancelot Sanderson. 19th, 20th, 22nd October; 19th November, 1936.

CEYLON — BILLS OF EXCHANGE — PROMISSORY NOTES — UNENFORCEABLE THROUGH NON-COMPLIANCE WITH STATUTORY REQUIREMENTS—WHETHER LOAN IRRECOVERABLE—WHETHER NOTES ADMISSIBLE IN EVIDENCE—MONEYLENDING ORDINANCE (No. 2 of 1918), ss. 2, 8, 10, 13.

Appeal by the plaintiffs from decrees of the Supreme Court of Ceylon (Dalton, acting C.J., Koch, J.) setting aside an order and a decree of the District Court of Colombo.

By a mortgage bond dated the 28th July, 1928, the first defendant, Ramanayake, covenanted with the plaintiff, Sockalingam, and one, Ramasamy, to pay any sum which might thereafter be owing to Sockalingam or Ramasamy on any promissory notes or cheques etc. made or indorsed by the first defendant in respect of any loans or advances in respect of any accounts or transactions whatsoever, with interest at 12 per cent. per annum. The bond further secured all such sums by the mortgage of certain properties specified in it. In April, 1931, Ramasamy assigned his rights under the bond to the second plaintiff. The plaintiff sought to recover Rs.129,416 alleged to be due in respect of money lent on the security of the bond and on certain promissory notes. The second defendant was joined as a puisne encumbrancer of the mortgaged property. The district judge decided that the promissory notes themselves were not enforceable as not conforming with certain statutory requirements, but that they were admissible in evidence to prove the amount due on the mortgage bond. He also held that the second defendant was entitled to have the transactions between the plaintiffs and the first defendant opened. He accordingly made an order on the 9th December, 1932, directing the plaintiffs to file a statement showing, *inter alia*, moneys actually lent by Sockalingam and Ramasamy to the first defendant, and an order on the 21st December, 1932, directing the sum due to the plaintiffs to be reduced by some Rs. 18,000, as having been over-charged by them. On the defendants' appeal against those orders, the Supreme Court held that the promissory notes failed to comply with s. 10 of the Moneylending Ordinance, 1918, because they failed to show certain required particulars, and that under s. 10 (2) they were not enforceable. The court held further that, although the bond was not in itself illegal, the court would refuse to enforce the security for the illegal transactions represented by the defective promissory notes, the bond, so far as it secured those illegal transactions, being tainted with the same illegality. The appeals against both orders were accordingly allowed.

SIR LANCELOT SANDERSON, giving the judgment of the Board, said that the defectiveness and non-enforceability of the promissory notes had been admitted. It was also admitted that the defectiveness was not due to inadvertence, and that the notes must be taken as fictitious within the meaning of the Ordinance to the knowledge of the lenders. It was, however, contended that the district judge had jurisdiction under s. 2 of the Ordinance to re-open the transactions with a view to relieving the first defendant from payment of any sum in excess of what was adjudged to be fairly due from him. The defendants contended that the plaintiffs were not entitled to recover the loans, because the promissory notes were unenforceable by reason of s. 10 and prohibited by necessary implication from s. 13. It was necessary, in considering those contentions, to observe that the Ordinance treated the loan as something different from the promissory note, which s. 10 described as a security. Thus, when s. 10 (2) provided that a promissory note not complying with the section should be unenforceable, it meant that the security consisting of the note was unenforceable. The section did not provide that the loan should be irrecoverable. It could be seen from s. 8 (2) that the Ordinance said so in clear language when it meant to prevent the enforcement of any claim in respect of a transaction. In their lordships' opinion, s. 2 showed that s. 10 did not intend to make the loan irrecoverable, and there was no inconsistency between ss. 2 and 10, each of which provided for a different contingency. In their lordships' opinion, however, the construction of the Ordinance was by no means free from difficulty. They thought that the promissory notes which were not enforceable because of s. 10, and prohibited by implication from s. 13, should not have been admitted in evidence to prove the loans. That admission in evidence would make the sections practically valueless. The appeal must be allowed and the matter remitted to the Supreme Court for the taking of a further account on the footing that the promissory notes were neither enforceable nor admissible in evidence to prove the loans. The two decrees of the Supreme Court allowing the appeals, and the orders of the district judge would be set aside. The further account should be taken by a different district judge, who had not seen the inadmissible promissory notes.

COUNSEL: *R. M. Montgomery*, K.C., *H. I. P. Hallett*, K.C., and *L. M. D. de Silva*, for the appellants; *J. Chinna Durai* and *Lady Chatterjee*, for the respondents.

SOLICITORS: *Lee & Pembertons*; *Hy. S. L. Polak & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

Pincott *v.* Moorstons Ltd.

Greer and Scott, L.JJ., and Eve, J. 17th December, 1936.

VENDOR AND PURCHASER—PURCHASE OF LEASE—VENDOR UNABLE TO SECURE LESSOR'S CONSENT TO ASSIGNMENT—PROVISION FOR THAT EVENT IN AGREEMENT—TIME FOR COMPLETION—NOTICE MAKING TIME OF ESSENCE—REASONABLENESS—DEPOSIT—WHETHER RETURNABLE.

Appeal from a decision of Branson, J. (80 SOL. J. 207).

In November, 1935, the plaintiff paid the defendants £100 as a deposit in respect of the proposed purchase of a lease of certain premises. An agreement was entered into between them, cl. 5 of which provided: "The leasehold premises . . . are only assignable with the consent . . . of the landlord . . . and the vendors shall use their best endeavours to obtain the requisite consent . . . and if such consent cannot conveniently be obtained the vendors shall, at the option of the purchaser, procure a declaration of trust of the premises in favour of the purchaser, or otherwise deal with the same as she shall direct." The agreement contained no provision relating to a return of the deposit. Difficulty having arisen in procuring the necessary licence to assign because the plaintiff's references were not satisfactory to the lessors, the plaintiff intimated that she was not prepared to furnish a guarantor, and on the 16th December gave written notice requiring the defendants to obtain the necessary licence within fourteen days. The defendants contended that cl. 5 prescribed the course to be adopted by the plaintiff if licence to assign were not obtained. The plaintiff contended that it gave her an option whether or not she would proceed with the agreement. At the end of December the defendants delivered to the plaintiff for her approval a draft licence to assign, but she refused to complete the contract. Branson, J., held that she could not recover her deposit.

GREER, L.J., dismissing her appeal, said that inability to assign on account of failure to obtain the landlord's consent was specially provided for by cl. 5, which was binding on the parties, and referred to *Peebles* v. *Crossthwaite*, 13 T.L.R. 198; *Rainbow Chemical Works Ltd.* v. ***Belvedere Fish Guano Co.***

[1921] 2 A.C. 465; *Chaplin* v. *Smith* [1926] 1 K.B. 198; and *Jackson* v. *Simons* [1923] 1 Ch. 373.

COUNSEL: *T. Davis; Field*, K.C.

SOLICITORS: *Burnett L. Elman; Kenneth Brown, Baker Baker.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Taylor *v.* Webb.

Slesser and Scott, L.JJ., and Farwell, J.
5th February, 1937.

LANDLORD AND TENANT—LANDLORD'S COVENANT TO REPAIR OUTSIDE WALLS AND ROOF—EXCEPTION FOR "FAIR WEAR AND TEAR"—FAILURE BY LANDLORD TO REPAIR DEFECTS—DAMAGE ARISING FROM THAT LIABILITY.

Appeal from a decision of du Parcq, J., (80 SOL. J. 288).

The defendant was tenant of certain premises under a sub-lease. The plaintiff was sub-lessor of the premises, and his claim for arrears of rent was not disputed by the defendant. The sub-lease provided (*inter alia*) that the tenant should keep the interior of the premises and the fixtures in good or tenantable repair, and that the landlord should keep the outside walls and roof "in good and tenantable repair (destruction or damage by fire and fair wear and tear excepted)." When the tenant went into possession in 1929, the premises were in satisfactory condition, but subsequently the walls and roof fell into disrepair, the house became damp and certain rooms became uninhabitable. Repairs done by the plaintiff proved ineffective. The defendant having counter-claimed for damages for alleged breach of the repairing covenant, du Parcq, J., gave judgment for the plaintiff in respect of the arrears of rent, and for the defendant on the counter-claim. The plaintiff appealed.

SLESSER, L.J., allowing the appeal, said that on the evidence the condition of the walls and roof were the result of fair wear and tear. Wear and tear arose from the operation of natural process or through human agency, direct or indirect. The meaning of "fair" varied accordingly. In relation to the forces of nature "fair" should be treated as synonymous with "normal" (see *Haskell* v. *Marlow* [1928] 2 K.B., at p. 57). Here the facts brought the absence of repair resulting in the deterioration of walls and roof within the exceptions exempting the landlord from the obligations to repair. The learned judge had relied on *Haskell* v. *Marlow*, *supra*. But in so far as it was there suggested that the amount of dilapidations might make wear and tear, which would otherwise be reasonable or fair, unreasonable or unfair, his lordship could not agree. Salter, J., had said that the words "fair" and "reasonable" qualified both the destructive agency and the dilapidations. But there was no authority for the view that the amount of the dilapidation could in itself make it unreasonable when it was occasioned by normal wear and tear. Talbot, J., had said that the exception of want of repair due to fair wear and tear must be construed as limited to what was directly due to the wear and tear, and did not mean that if a defect originally proceeded from reasonable wear and there was a release from the obligation to keep the premises in good repair and condition in respect of everything which might be ultimately traced to that defect. Consequently, he said, such repairs must be done as might be necessary to prevent the consequences flowing originally from the wear and tear from producing others which the wear and tear would not directly produce. His lordship differed from this view. If, as here, the landlord was only required to keep the outside walls and roof properly repaired in cases where fair wear and tear were excepted, and if there was no case against him other than dilapidation to walls and roofs through fair wear and tear, he had committed no breach of contract, and was under no obligation. Being under no obligation to repair, he could not be held responsible for consequential damages flowing from absence of repairs which he was not obliged to do. On the facts the landlord had no obligations, and *Haskell* v. *Marlow*, *supra*, was wrongly decided.

SCOTT, L.J., and FARWELL, J., agreed.

COUNSEL: *Pritt*, K.C., and *Ricardo; L. Minty.*

SOLICITORS: *Martyns & Gane; J. Prag.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Sandeman's Will Trusts; Sandeman *v.* Hayne.

Clauson, J. 11th January, 1937.

WILL—SHARES IN PRIVATE COMPANY HELD IN TRUST—SOME BENEFICIARIES BECOMING ABSOLUTELY ENTITLED—TRANSFER TO THEM—DIVISION OF VOTING POWER.

The testator, who died in 1911, left his residuary estate to trustees in trust to pay half the income to his son for life and half to his daughter for life, and, subject to these life interests, the children of each were to be absolutely entitled to one-half of the estate. The estate largely consisted of shares in a private limited company, and, with regard to these, the will directed the trustees not to sell them "unless they in their discretion shall consider it absolutely necessary, and I authorise them to retain the same so long as they in their absolute and uncontrolled discretion shall think fit, without being in any way held answerable or responsible for any loss which may accrue to my estate thereby . . ." The testator's son having died in 1935, his two sons, who were both of full age, called upon the trustees to divide the estate and transfer the half to which they were entitled to them. The trustees claimed that under the will they were entitled to refuse to transfer the shares. The voting power of the shares comprised in the estate was sufficient to enable the holder to control the passing of an ordinary, but not a special, resolution. On behalf of the trustees it was suggested that the company's position was difficult and that for a time it was desirable in the interests of the trust fund that they should retain the shares and control the voting power which they contended should not yet be divided.

CLAUSON, J., in giving judgment, said that there was no practical difficulty in dividing the estate or in dividing these shares into two halves, leaving one half in the hands of the trustees in trust for the daughter and her family, and transferring the other to the persons absolutely entitled to it. The question was whether there was any good ground for ignoring their *primâ facie* right to have the shares transferred to them. It had been suggested that the will gave the trustees power to refuse to transfer part of the trust property to a beneficiary absolutely entitled, if that part were the shares in this company. That did not seem to be the true construction of the clause relied on, which dealt with the question of the sale of the shares. Transfer of them to a beneficiary was not a sale, but recognition by the trustees of a man's title to something which belonged to him. But apart from the question of construction, it must be considered whether there was any circumstance which would justify a refusal to give effect to the *primâ facie* right of the beneficiaries to have the shares transferred to them (*In re Marshall* [1914] 1 Ch. 192). It had been argued that if the shares remained in the trustees' hands they could control an ordinary resolution. But they could only do that having regard to the interests of the beneficiaries, and if two sets of beneficiaries equally concerned took different views of the course the trustees should take, the court would see that the trustees, before exercising their powers of voting, paid proper regard to the wishes of both, for they had no independent right to deal with the voting power. Very special circumstances were conceivable where the court might refuse to give effect to the right of the beneficiaries to a transfer, but such circumstances did not exist here. It was not to be supposed that either the

trustees or the beneficiaries, when the shares were transferred to them, would exercise their voting power otherwise than *bonâ fide*, and no harm would be done to anybody by letting the beneficiaries have their shares and the voting power on them in their own control. An order for transfer must be made.

COUNSEL: *Beebee; J. Nesbitt, Wilfrid Hunt.*

SOLICITORS: *Pickering, Kenyon & Co.; Boulton, Sons & Sandeman.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Messenger's Estate; Chaplin *v.* Ruane.

Clauson, J. 14th January, 1937.

WILL—PRINTED FORM FILLED IN—BENEFICIARY SPECIFIED—NO PROPERTY SPECIFIED—WHETHER WHOLE PROPERTY DISPOSED OF.

A testator, who died in 1934, made his will properly signed and attested on a printed form, which he filled in as follows: "This is the last will and testament of me *Frederick Messenger*, of 75 *Vernon Road, Feltham*, in the County of *Middlesex* I hereby revoke all wills and testamentary instruments heretofore by me made. I appoint *Mrs. E. A. Chaplin*, of 75 *Vernon Road, Feltham, Middlesex* and of to be the executors of this my will. I direct my executors to pay my just debts and funeral and testamentary expenses. I give and bequeath to *my daughter Mrs. E. A. Chaplin.*" The question arose whether the will passed all the testator's property to the daughter named or whether there was an intestacy.

CLAUSON, J., in giving judgment, said that it was clear that the testator meant to make an effective will (see *In re Harrison*, 30 Ch. D. 390, at p. 393) to dispose of his property, and in some way to benefit his daughter. It was also reasonably clear that he wished her to benefit to the extent of all his property (see *In re Bassett's Estate*, L.R. 14 Eq. 54, and *Fell* v. *Fell*, 31 Commonwealth L.R. 268). She was beneficially entitled to the whole estate.

COUNSEL: *B. Tatham; Jennings.*

SOLICITORS: *Tamplin, Joseph, Ponsonby, Ryde & Flux; Tucker, Hussey & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

R. *v.* South-Eastern Traffic Commissioners: *Ex parte* Valliant Direct Coaches Limited; Same *v.* Minister of Transport: *Ex parte* Same; Same *v.* South-Eastern Traffic Commissioners: *Ex parte* Same.

Lord Hewart, C.J., Swift and Macnaghten, JJ.
15th, 16th December, 1936.

ROAD TRAFFIC—ROAD SERVICE LICENCE FOR SEASONAL EXPRESS COACH SERVICE—APPLICATION TO TRAFFIC COMMISSIONERS FOR BACKING TO LICENCE—APPLICATION GRANTED WITH EXTENDED FACILITIES RELATING TO SINGLE JOURNEYS—ORDER BY MINISTER OF TRANSPORT CANCELLING EXTENDED FACILITIES—SUBSEQUENT RENEWAL OF LICENCE BY COMMISSIONERS WITHOUT EXTENDED FACILITIES—CONDITIONS AFFECTING SCOPE OF LICENCE OUTSIDE AREA WHERE GRANTED—JURISDICTION—ROAD TRAFFIC ACT, 1930 (20 & 21 Geo. 5, c. 43), ss. 73 (2), 81 (1)—ROAD TRAFFIC ACT, 1934 (24 & 25 Geo. 5, c. 50), s. 40, Sched. III.

Rules *nisi* for certiorari and mandamus.

The applicants, Valliant Direct Coaches Ltd., had, before February, 1935, been authorised to run a seasonal service of express coaches from London to the coast, the licences containing, *inter alia*, conditions (*a*) that a return ticket might be issued and used only for a journey beginning in the metropolitan traffic area and returning to the area, and (*b*) (No. 16), that single tickets might only be issued for journeys outward from the area. On an application made on the 18th February, 1935, for backings for the licences for the service in question, the Traffic Commissioners granted the backings, with a permission added to condition 16 for the issue of tickets for single journeys to the metropolitan area from places outside it, subject to certain conditions. The Southern Railway and Southdown Motor Services Ltd., having appealed against the renewed and varied licences, the Minister of Transport, on the 25th October, 1935, ordered the Commissioners to amend the applicants' licences by deleting the newly-added permission. In December, 1935, the applicants having applied for backings for their licences for 1936, the Commissioners felt obliged, in view of the Minister's order, to attach only the conditions which had prevailed before the addition made in February, 1935. The applicants accordingly obtained these three rules. The first was directed to the Minister of Transport calling on him to show cause why a writ of certiorari should not issue to quash his order of October, 1935, and was obtained on the following grounds, *inter alia*: (1) that there was no jurisdiction to make the order as it resulted in a condition which the Commissioners themselves had no power to impose, and (2) that the Minister had failed to exercise the jurisdiction, if any, granted him by s. 81 of the Road Traffic Act, 1930. The second rule, directed to the Commissioners, called on them to show cause why a writ of certiorari should not issue to quash their order of December, 1935, the grounds for the rule being, *inter alia*, that the Commissioners had no jurisdiction to attach the conditions of the order, and that the conditions were not authorised by the Act for the reason, among others, that they were not limited in effect to the South-eastern area. The third rule was directed to the Commissioners calling on them to show cause why a writ of mandamus should not issue commanding them to hear and determine the application of December, 1935.

LORD HEWART, C.J., said that s. 73 (2) of the Act of 1930 enabled the Commissioners of a traffic area in which the backing of a licence, which had been granted elsewhere, was applied for, where a continuous journey was contemplated, to impose a condition which would affect the scope of the licence not only in their own area, but elsewhere also. Part of the grounds advanced for the argument that the Commissioners had exceeded their jurisdiction was that the effect of deleting the additional permission which the applicants had secured in February, 1935, was to limit the scope of their licence in the South-eastern Traffic Area and elsewhere. That point had already been decided, even if s. 73 (2) were not sufficiently plain. Although it had not been suggested that the Southern Railway or Southdown Motor Services Ltd. were not artificial persons "providing transport facilities" within the meaning of s. 81 (1) (*b*), of the Act of 1930, it was said that neither was a person who "has opposed the grant of a road service licence," within the meaning of s. 81 (1) (*b*). But subsequent legislation had explained or extended the meaning of that sentence. By. s. 40 of, and Sched. III to, the Road Traffic Act, 1934, after the word "grant" the words "or variation" were to be inserted in s. 81 (1) (*b*). Accordingly no distinction could now be drawn between those who opposed the original grant of a licence and those who opposed a variation of its conditions. With regard to the third rule, the Commissioners had already heard and determined, and the Act did not require them to consider the applications relieved of the objections to the added permission. The rules must be discharged.

SWIFT and MACNAGHTEN, JJ., agreed.

COUNSEL: *The Solicitor-General* (Sir Terence O'Connor), and *Valentine Holmes*, for the Minister and the Commissioners: *Walter Monckton*, K.C., and *Sir R. Ross*, for the Southern Railway; *N. R. Fox-Andrews* and *A. B. King-Hamilton*, for Southdown Motor Services Ltd., showing cause; *R. P. Croom-Johnson*, K.C., and *B. M. Cloutman*, in support.

SOLICITORS: *The Treasury Solicitor; W. Bishop; Sydney Morse & Co.; J. R. Cort Bathurst.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Wilson *v.* Murphy.

Lord Hewart, C.J., Swift and Goddard, JJ.
13th January, 1937.

GAMING—READY MONEY BETTING—FOOTBALL POOL BUSINESS CARRIED ON ON CREDIT BASIS—READY MONEY ACCEPTED FOR COUPONS BY AGENT WITHOUT PRINCIPAL'S KNOWLEDGE—WHETHER PRINCIPAL GUILTY OF AN OFFENCE—READY MONEY FOOTBALL BETTING ACT, 1920 (10 & 11 Geo. 5, c. 52), s. 1.

Appeal by case stated from a decision of the Recorder of Liverpool.

On the 6th February, 1936, two informations were preferred by the Chief Constable of Liverpool, the appellant, against the respondent, Murphy, charging him with having, on certain dates in 1936, at Liverpool, published certain coupons of ready money football betting businesses called the "Everyman's Penny Pool" and "Staunch Totalisator Football Pools," respectively, contrary to s. 1 of the Ready Money Football Betting Act, 1920. The Liverpool Stipendiary Magistrate having convicted Murphy, and fined him £50 and £3 12s. costs in respect of each offence, Murphy appealed to quarter sessions, and the following facts were proved at the appeal: At all material times Murphy carried on the two football pool betting businesses from Edinburgh on a credit basis only. For the purpose of conducting those businesses Murphy employed approximately 10,000 collectors in different parts of the United Kingdom, one of whom was one Hughes, the proprietor of a shop in Liverpool. Murphy had issued printed instructions to Hughes, by which Hughes had undertaken to be bound, and Murphy had not transferred any discretion to Hughes as to the manner in which he was to act. The first of the printed instructions was: "The money invested by clients must not be accepted or collected until after the matches have been played. It is illegal to accept money at the time the investment is made." All coupons and forms used and sent to Hughes by Murphy bore the words "Credit only" in large type. Certain customers who took coupons in Hughes' shop, at the same time paid him the sums which would have become payable by them after the playing of the matches. Hughes accepted those sums only for the convenience of himself and his customers. No money was sent by Hughes to Murphy with the coupons, but the amount due was forwarded by him after the results of the matches had been made known. Hughes' practice of sometimes accepting money with the coupons was unknown to Murphy, who had no reason to suspect it. The words "credit only" on the coupons were not a cloak or sham, but constituted a genuine condition of entry. It was contended for the Chief Constable that s. 1 of the Ready Money Football Betting Act, 1920, was an absolute prohibition, for the infringement whereof, by himself or his agent, Murphy was in law responsible, and that unless such a vicarious responsibility were imposed on him the provisions of the Act would be rendered nugatory. It was contended for Murphy that his businesses were credit businesses only, that the coupons were coupons of those businesses and not of any ready money football betting business, that the fact that Hughes had without authority accepted money did not alter the nature of Murphy's business, and that Murphy was not in law responsible for the acts of Hughes in accepting cash with the coupons. The Recorder was of opinion that the Act did not cast an absolute duty on Murphy with regard to unauthorised acts which he had no reason to anticipate, and which were committed without negligence on his part, and that Murphy was not liable for the acts of Hughes, done for Hughes's own purposes and not as part of Murphy's businesses. He therefore allowed Murphy's appeal. The Chief Constable now appealed to the High Court.

LORD HEWART, C.J., said that, to put the matter quite simply, the charge against Murphy was that he had published coupons of a ready money football betting business. The evidence showed that what he had published were coupons of a credit business, and that he had given most careful instructions to his collectors not to take ready money. No useful analogy could be drawn between that case and *Allen* v. *Whitehead* [1930] 1 K.B. 211, where a licensee was held responsible for the act of his manager in permitting prostitutes to frequent the licensed premises. There it was obvious that the licensee had put in a position of responsibility a man who was called on to exercise the discretion which the licensee should have exercised. There were no such conditions in the present case. The collector who was appointed to help in carrying on a credit business chose to employ part of the apparatus for the opposite purpose of a ready money business. The appeal failed.

SWIFT and GODDARD, JJ., agreed.

COUNSEL: *F. E. Pritchard*, for the Chief Constable; *Sir William Jowitt*, K.C., and *Hartley Shawcross*, for Murphy.

SOLICITORS: *F. Venn and Co.*, agents for *Walter Moon*, Town Clerk, Liverpool; *James Turner and Son.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Taylor *v.* Sir William Arrol & Co. Ltd.

Singleton, J. 18th January, 1937.

WORKMEN'S COMPENSATION—FATAL ACCIDENT—APPLICATION BY DECEASED'S CHILDREN FOR COMPENSATION IN COUNTY COURT—WIDOW MADE RESPONDENT TO APPLICATION—WHETHER OPTION TO TAKE COMPENSATION EXERCISED—DECLARATION OF INTENTION TO BRING SEPARATE ACTION—RIGHT TO DO SO—FATAL ACCIDENTS ACT, 1846 (9 & 10 Vict., c. 93)—WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 Geo. 5, c. 84), ss. 8 (3) (ii); 29 (1) and (2); 48 (3)—WORKMEN'S COMPENSATION RULES, 1926, r. 4 (2).

Preliminary point of law in an action under the Fatal Accidents Act, 1846, for damages in respect of alleged negligence.

The plaintiff was the widow of one, Taylor, who, while employed by the defendants in the demolition of Waterloo Bridge in August, 1935, sustained an accident as a result of which he died. The deceased left two infant children besides his widow, who brought this action on her own behalf only. An application for compensation for the children was made in the county court by the plaintiff's solicitor. The arbitration proceedings, which were brought by the children's next friend, were watched on her behalf by the present plaintiff's solicitor who instructed the children's counsel in the arbitration. Giving evidence in those proceedings, Mrs. Taylor said that she proposed taking proceedings in another court to recover damages for her husband's death. The county court judge ordered Mrs. Taylor to be entered as a respondent to the arbitration in accordance with r. 4 (2) of the Workmen's Compensation Rules, 1926, and he adjourned the arbitration proceedings. Mrs. Taylor, having brought the present action, the defendants raised the contention, now tried as a preliminary point of law, that, as Mrs. Taylor had been made a party to the county court proceedings, her present action was barred by virtue of s. 29 (1) of the Workmen's Compensation Act, 1925, whereby a workman (or his dependants) may at his option either claim compensation under the Act, or take proceedings independently of it.

SINGLETON, J., said that it was submitted for the defendants (1) that the defendants had exercised their option under s. 29 and that the plaintiff's present action was accordingly barred; (2) that the action under the Fatal Accidents Act was really one brought for the benefit of the children, and that the plaintiff on that account was, in view of the children's arbitration proceedings, not entitled to bring it; (3) that, if the plaintiff were allowed to proceed with the action, and

were successful, the absurd position would arise that she would deprive the child, whom the county court judge held to be a dependant, of the compensation to which he would otherwise be entitled. In his (his lordship's) opinion, each of those contentions failed. In *Codling* v. *John Mowlem & Co. Ltd.* [1914] 3 K.B. 1055, it had been held on the facts by the Court of Appeal that the plaintiff had made herself a party to a claim for workmen's compensation, Atkin, J.'s dictum [1914] 2 K.B. 61, p. 69, that the defendants, having paid compensation under the Act, were not liable to damage independently of the Act, not having been upheld. That case had been considered in *Kinneil Cannel & Coking Coal Co. Ltd.* v. *Sneddon or Waddell* [1931] A.C. 575. The dictum of Atkin, J., was there disapproved, but the reasons of the Court of Appeal, which had had the same result, were approved. In his (his lordship's) opinion, the *Kinneil Cannel case, supra*, covered the present, and disposed of the defendants' first submission. He did not think it possible to say that the fact that the same solicitor was acting for the defendants in the arbitration and for the plaintiff here meant that both exercised the same option, particularly when the plaintiff said through her solicitor that she intended pursuing her remedies apart from the Act. With regard to the second contention, in his (his lordship's) opinion, it was open to the widow to bring the action on her own behalf. Lord Thankerton in his speech in the *Kinneil Cannel case, supra*, [1931] A.C., at p. 588, had referred to the right arising to a person in Mrs. Taylor's position to herself as an individual to bring her action. The relevant statutes gave her a right to bring proceedings on her own behalf, just as she had also a right in ordinary circumstances to bring proceedings on behalf of her infant children. It was impossible to say that she lost her right under the statutes because she was not in a position to join her children in her action. The defendants' third contention was based on s. 8 (3) (ii) of the Workmen's Compensation Act, 1925. He (his lordship) was not sure that it was right to say that, unless and until something were fixed for the widow, nothing could be fixed for the other dependants. He did not think that any award of damages to the plaintiff in the action would have the effect of depriving the children of compensation. The county court judge had decided that one of the children had a right to compensation, and it might have been advisable to reserve until later, as the judge had done, the decision of the amount. The preliminary point must, accordingly, be decided in the plaintiff's favour. He (his lordship) regretted that this course of procedure had been entered upon. The death had taken place in August, 1935, but the action was still only in the preliminary stages, and the dependants had not yet any compensation. He could not help thinking that the form of the proceedings had rather caused the defendants difficulty than helped the dependants.

COUNSEL: *G. G. Baker*, for the plaintiff; *J. A. Pugh*, for the defendants.

SOLICITORS: *Scott Duckers & Co.; Carpenters.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Ellis and Another *v.* Fulham Corporation.

Greaves-Lord, J. 3rd, 4th February, 1937.

NEGLIGENCE—PARK OWNED BY LOCAL AUTHORITY—POOL FOR PADDLING—CHILD CUT BY GLASS—NEGLIGENCE OF PARK-KEEPERS—INVITEE—DUTY OF LOCAL AUTHORITY.

Action for damages for negligence and breach of duty, by an infant plaintiff and his father.

In August, 1936, while the infant plaintiff was lawfully making use of a pond in a park, of which the Fulham Borough Council were owners and occupiers, he stepped on a piece of glass lying in the sand near the edge of the pool, with the result that his foot was severely cut. Before going home, he had entered the water to remove the sand from his feet. Having entered the pool, he felt his foot come into contact with a sharp substance. On coming out of the water he found that his foot was cut rather seriously. A park-keeper bandaged the child's foot and he was taken to hospital, where it was found that the main ligament of the great toe had been severed.

GREAVES-LORD, J., said that the pool had been provided by the Fulham Borough Council as one of the attractions of the park with a view to making an appeal to those who lived in Fulham. Loads of sand were brought from the sea and put by the side of the pool to give the appearance and attractions of the seaside. The pool was nowhere deeper than 2 feet, and was suitable for paddling. It must have been obvious to the borough council that such a pool, unless carefully supervised, might very easily become of the nature of a trap. This was an important question affecting the rights of all those who used the various means of amusement and exercise provided by every borough council. The defendant council contended that they really owed the plaintiffs no duty except to avoid anything in the nature of a trap, that the child was a mere licensee, and that they had amply fulfilled every duty which could conceivably be required of them. Certain authorities had been cited, but he (his lordship) did not think that any of them impelled him to limit the infant plaintiff to the class of bare licensees. In his opinion, taking the description of an invitee used by Lord Dunedin in *Robert Addie & Sons (Collieries), Ltd.* v. *Dumbreck* [1929] A.C. 358 (at p. 371), this child was certainly an invitee. The defendants must have known from the outset what was necessary to make the provision of the pool something worth while, and not a mere trap. The glass was a danger of which the borough council ought to have known, and of which they would have known if their instructions had been carried out. Taking reasonable care was not limited to mere provision of a pool of this nature. Reasonable care must extend to the general management of the pool. The area of sand beside the pond was quite a small one. If instructions were properly carried out a park-keeper went over the pond and raked it out. The type of rake used, which had been produced in evidence, only went over the top of the sand. The defendants could have provided a rake with which the park-keeper could rake over and in the sand, in which case the glass would have been found and the accident avoided. To hold that the borough council should always provide supervision to prevent objects such as glass from getting into the pond would be unreasonable. But the matter did not end there. The accident could still have been prevented by proper supervision, of which there was not sufficient in this case. Another little boy had been injured in the same place a few days before the plaintiff. That had been reported to a subordinate park-keeper who had failed in his instructions by omitting to report it further. He had come to the conclusion that while the council had given to their head park-keeper instructions which might conceivably, if carried out, have avoided the accident, those instructions had not been carried out. That failure was negligence on the part of the council's servants for which the council were responsible. He would award the infant plaintiff £50, and the special damages claimed would be paid to his father.

COUNSEL: *Roland Oliver*, K.C., *I. H. Jacob*, and *R. Gold*, for the plaintiffs; *N. L. C. Macaskie*, K.C., *Granville Sharp*, and *Willard Sexton*, for the defendant council.

SOLICITORS: *Tobin & Co.; W. Townend*, Town Clerk, Fulham.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Liverpool City Council have approved a recommendation from the Co-ordination Committee that Mr. W. H. BAINES, Town Clerk, be permitted to act as Clerk to the Mersey Tunnel Joint Committee. Mr. Baines was admitted a solicitor in 1926.

Reviews.

Principles and Practice of the Criminal Law. By SEYMOUR F. HARRIS, B.C.L., M.A. (Oxon). Sixteenth Edition, 1936. By A. M. WILSHERE, M.A., LL.B., of Gray's Inn and the Western Circuit, Barrister-at-Law. Demy 8vo. pp. lii and (with Index) 730. London: Sweet & Maxwell, Ltd. 15s. net.

It will be a sufficient commendation to state that the new edition of this work follows the lines of its predecessors and gives a concise yet ample account of the various branches of the subject with which it is concerned in a manner which should be useful alike to practitioners and advanced students. Following introductory chapters dealing with the nature of criminal offences and questions relating to the mental aspects of criminal offences, etc., succeeding portions of the book are devoted to offences of a public nature, offences against the person, offences against property and criminal procedure, while the concluding portion of some 130 pages treats of the courts of summary jurisdiction. References are given to cases contained in Wilshere's "Leading Cases in Criminal Law." New editions whenever prepared must suffer from the non-inclusion of immediate succeeding material, but it is unfortunate that the production of this edition could not have been timed to enable the Public Order Act to be included. The table of statutes would be improved by setting out the title of the Acts concerned instead of indicating their contents by a few words.

The Dryads and other Tales. By FRANK WHITE. 1936. Demy 8vo. pp. xi and 305. London: Frederick Warne and Co. Ltd. 3s. 6d. net.

A notice of the publication of a book of fairy stories, however charming they may be, might in the usual way be considered somewhat out of place in these columns. The reason, however, for drawing attention to this work is because it has been written in his spare time by a London solicitor, Mr. Frank White, whose earlier book, "Jangle Jingles," we reviewed in 1931. This latest example of his versatility, which was originally intended for children in his own limited circle, consists of new versions of three well-known stories, The Sleeping Beauty, Cinderella and Aladdin. These the author has called respectively "The Dryads," "Ramshackle Keep," and "The Djinn." "The Dryads" is beautifully written, and is a delightful representation of the story. The book is attractively illustrated by A. M. Corah.

Books Received.

Lectures and Transactions of the Incorporated Accountants' Students' Society of London and District, 1935–36. London: Incorporated Accountants' Students' Society. 3s. 6d. net.

Report of the Departmental Committee appointed to Enquire into the Law of Scotland Relating to the Constitution of Marriage. 1937. London: H.M. Stationery Office. 6d. net.

Every Man's Own Lawyer. By a Barrister. Sixty-fourth Edition, 1937. Demy 8vo. pp. xvi and (with Index) 941. London: The Technical Press, Ltd. 15s. net.

The Law Finder. Fourth Edition, 1937. Demy 8vo. pp. 164. London: Sweet & Maxwell, Ltd. 2s. 6d. net.

The Law of Income Tax. By Sir JOHN HOULDSWORTH SHAW, Solicitor of Inland Revenue, and T. MACDONALD BAKER, an Assistant Solicitor of Inland Revenue. 1937. Royal 8vo. pp. xci and (with Index) 633. London: Butterworth & Co. (Publishers), Ltd. 40s. net.

The Law of Political Uniforms, Public Meetings and Private Armies. By JOSEPH BAKER, Barrister-at-Law, of Lincoln's Inn and Gray's Inn. 1937. Demy 8vo. pp. xii and 191. London: H. A. Just & Co. 7s. 6d. net.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

The New County Court Rules.

Sir,—Referring to the letter of Messrs. Solomon, Staddon and Barnes in your issue of the 6th instant, I beg to draw attention to the fact that the old practice as to amendment of summons before service (to which I presume they refer) is substantially reproduced in the new rules by the provisions of Ord. VIII, r. 29, which relates to an ordinary summons, and applied to default summonses by r. 36 of that Order. The fee for amendment (if of name or occupation) is now one shilling only.

Birmingham. G. M. BUTTS.
8th February.

Obituary.

MR. J. R. HOLMES.

Mr. John Richard Holmes, barrister-at-law, late President Judge of the High Court of Justice, Cyprus, died at Newton Abbot on Saturday, 6th February, in his eighty-seventh year. Mr. Holmes was called to the Bar by the Middle Temple in 1892.

MR. W. W. WEBB.

Mr. Wilfred William Webb, solicitor, senior partner in the firm of Messrs. William Webb & Sons, of Laurence Pountney Hill, E.C., died on Wednesday, 3rd February. Mr. Webb was admitted a solicitor in 1901.

Parliamentary News.

Progress of Bills.

House of Lords.

Arbitration Bill.
Read Third Time. [9th February.
Beef and Veal Customs Duties Bill.
Reported, without Amendment. [9th February.
Consolidated Fund (No. 1) Bill.
Read Second Time. [10th February.
East Anglesey Gas Bill.
Read Second Time. [10th February.
East India Loans Bill.
Read First Time. [9th February.
Public Records (Scotland) Bill.
In Committee. [9th February.
Public Works Loans Bill.
Read Second Time. [10th February.
Regency Bill.
Read Second Time. [10th February.
Trade Marks (Amendment) Bill.
In Committee. [9th February.
Unemployment Assistance (Temporary Provisions) (Amendment) Bill.
In Committee. [9th February.

House of Commons.

Aberystwyth Rural District Council Bill.
Read Second Time. [8th February.
Arbitration Bill.
Read First Time. [10th February.
Auctioneers and House Agents (Protection of Public against Abuses) Bill.
Read First Time. [9th February.
Barking Corporation Bill.
Read Second Time. [8th February.
Brighton, Hove and Worthing Gas Bill.
Read Second Time. [8th February.
British Shipping (Continuance of Subsidy) Bill.
Read Second Time. [4th February.

Bucks Water Bill.
Read Second Time. [8th February.
Cardiff Extension Bill.
Read Second Time. [8th February.
Chairmen of Traffic Commissioners (Tenure of Office) Bill.
Read First Time. [8th February.
Consolidated Fund (No. 1) Bill.
Read Third Time. [4th February.
Dunstable Gas and Water Bill.
Read Second Time. [8th February.
East India Loans Bill.
Read Third Time. [8th February.
General Cemetery Bill.
Read Second Time. [8th February.
Gosport Water Bill.
Read Second Time. [8th February.
Great Western Railway Bill.
Read Second Time. [8th February.
Grimsby Corporation (Grimsby and District Water, etc.) Bill.
Read Second Time. [10th February.
Huddersfield Corporation Bill.
Read Second Time. [8th February.
Kingston-upon-Hull Provisional Order Bill.
Read Second Time. [5th February.
Lancashire Electric Power Bill.
Read Second Time. [8th February.
Liverpool Exchange Bill.
Read Second Time. [8th February.
London and North Eastern Railway Bill.
Read Second Time. [8th February.
London County Council (General Powers) Bill.
Read Second Time. [8th February.
London Midland and Scottish Railway Bill.
Read Second Time. [8th February.
London Passenger Transport Board Bill.
Read Second Time. [8th February.
Marriage Bill.
Reported, with Amendments. [9th February.
Medical Practitioners' Communications (Privilege) Bill.
Second Reading negatived. [5th February.
Ministry of Health Provisional Order (Bedford) Bill.
Read Second Time. [5th February.
Ministry of Health Provisional Order (Colwyn Bay) Bill.
Read Second Time. [5th February.
Ministry of Health Provisional Order (East Hertfordshire Joint Hospital District) Bill.
Read Second Time. [5th February.
Ministry of Health Provisional Order (Somerset and Wilts) Bill.
Read Second Time. [10th February.
Ministry of Health Provisional Order (Wisbech Joint Isolation Hospital District) Bill.
Read Second Time. [5th February.
Newcastle-upon-Tyne Corporation Bill.
Read Second Time. [8th February.
Newcastle-upon-Tyne Corporation (Trolley Vehicles) Provisional Order Bill.
Read Second Time. [10th February.
North Metropolitan Electric Power Supply Bill.
Read Second Time. [8th February.
Public Works Loans Bill.
Read Third Time. [4th February.
Regency Bill.
Read Third Time. [4th February.
Reserve Forces Bill.
Read Second Time. [9th February.
Richmond (Surrey) Corporation Bill.
Read First Time. [8th February.
Rochdale Corporation Bill.
Read Second Time. [10th February.
Rotherham Corporation Bill.
Read Second Time. [10th February.
Saddleworth Urban District Council Bill.
Read Second Time. [8th February.
Sheffield Corporation Bill.
Read Second Time. [10th February.
Staffordshire Potteries Water Board Bill.
Read Second Time. [8th February.
Summary Procedure (Matrimonial and Other Matters) Bill.
Read Second Time. [5th February.
Torquay Corporation Bill.
Read Second Time. [10th February.
Wandsworth and District Gas Bill.
Read Second Time. [8th February.
Watford Corporation Bill.
Read Second Time. [8th February.

Societies.

The Clarke Hall Fellowship.

PROBATION AND SOCIAL SERVICES OF THE COURTS.

The third Clarke Hall lecture was delivered in Gray's Inn Hall, on the 27th January, by Mr. S. W. Harris, Assistant Under-Secretary of State.

Sir HERBERT SAMUEL, M.P., who took the chair, confessed to three terms of hard labour at the Home Office. During the first, as under-secretary to Sir Herbert Gladstone, an ardent advocate of penal reform, he had helped to pass the Probation Act, 1907, and the Prevention of Crime Act and Children Act, 1908. These and later Acts had made the British penal system far more intelligent and humane, and had led to the passing of the extremely important Children and Young Persons Act, 1932. The last thirty years had seen a great advance in the general level of civilisation in Great Britain. Committals to prison had fallen from 180,000 to less than 60,000, and prisons had been closed for lack of tenants. Mr. Harris had taken a leading part in the penal reform work in which the Home Office was so active, for he had been a member and afterwards head of the Children's Branch of the Home Office, and was now Assistant Under-Secretary.

In opening his lecture, Mr. Harris called the late Sir William Clarke Hall an apostle of the probation system and one of its best-known exponents. The recent Departmental Committee on the Social Services in Courts of Summary Jurisdiction had investigated the duties of the probation officer on the broadest possible basis, while giving precedence to his primary function, that of probation work. Too many magistrates shared the popular idea that probation meant undiluted lenience, while others seemed to regard it as a form of police supervision and to have the illusion that there was no need for the court or the probation officer to bother about the offender unless he committed another offence. Sir Herbert Samuel's speech in moving the second reading of the Act had said clearly:—

> "Its purpose was to enable courts of justice to appoint probation officers, and pay them salaries or fees, so that certain offenders whom the court did not think fit to imprison, on account of their age, character or antecedents, might be placed on probation under the supervision of these officers, whose duty it would be to guide, admonish and befriend them. Under the Bill the various courts of justice would have complete freedom of choice as to the officers they would appoint, and he hoped that with this latitude, in a few years, experience would show what class of men, or of women, should best be placed in charge of these cases."

The last annual report of the Chief Probation Officer for New Zealand showed that in that Dominion also there was misconception of the nature of probation. This report defined it as—

> "the suspension of final judgment in a case, but involving a judicial warning and the giving of the offender an opportunity of readjusting himself and making amends whilst living as a member of the community, subject to conditions which may be imposed by the court, and under the supervision and friendly guidance of a probation officer."

As the New Zealand officer said, it was a great mistake to assume that probation was equivalent to being let off. It had a definite disciplinary purpose, but the restrictions on liberty were imposed not so much by way of punishment as with the object of assisting the probationer to become accustomed to a more ordered and disciplined mode of living. The principle of binding-over was deeply embedded in English law and was, indeed, the parent of the probation system, but was an entirely different method and should be distinguished from it. The Act, mentioning certain conditions attached to the use of probation, included the factor of age. This seemed to have led to the belief that the method was suitable for children and not for adults—a tragic mistake. When a child fell into criminal ways there was, in nine cases out of ten, a bad home or unsatisfactory environment and the best measure might well be to send him to a residential school or Borstal; but for the adult, probation had the advantage of saving him from the contamination of prison and from the serious social consequences of being removed from his family and his work.

Probation contained a definite element of punishment which might be more severe than the consequences, for example, of a fine. One of its most valuable elements was that it depended on the consent of the offender. It was essential that the courts should not take that consent for granted. Probation was a constructive and systematic effort to advise, assist, befriend and, where necessary, find suitable employment. It might call for resource, judgment

and infinite patience. To treat all probationers alike was to court failure. Nor must the probation officer rely solely on his own resources; he must tap every source of help from voluntary agencies and other social services. Nor should the court hesitate to deal severely with probationers who did not try to fulfil their promise and disregarded the efforts of the probation officer. The framing of suitable conditions, so that the treatment suited the offender, was a most valuable adjunct to a probation order. The conditions, of course, must not be unreasonable. A valuable one, and one capable of much greater development, was that the offender should reside at some address specified by the court. This condition also was liable to abuse; if release on probation consisted of residing in a home for two or three years it ceased to have anything in common with probation.

The Earl of Meath, in introducing the Bill to the House of Lords, had asserted that it would prevent crime and to a large extent empty the gaols. The immense reduction in the prison population to-day was mainly due to the probation system and the allowance of time for the payment of fines. The decreased use of prison had not led to an increase of crime. Nevertheless, it would be idle to pretend that the application of the system was any way approaching the standard of perfection. Some courts hardly ever used it. There was plenty of evidence from the prisons of the disastrous disregard of facilities which courts possessed but did not exercise. In other cases probation was unsuitably applied through lack of antecedent inquiry. Such home inquiries should be made by the probation officer, and his work of social investigation was perhaps his most important function next to the actual supervision. Nothing could place the probation system on a stronger foundation than a scientific appraisement of its results; there was no reason to fear the issue, but at present this region had not been completely surveyed.

MATRIMONIAL DISPUTES.

Another function of the highest value was conciliation in disputes between husband and wife. A very considerable number of persons approached the summary courts every year in this connection, and many more were seen by clerks and probation officers without any application being put on record. The task called for great qualities; sympathy, tact, knowledge of the world, judgment and a sense of humour. Much could no doubt be taught by training. The wise probation officer must recognise his limits; he must appreciate the legal rights of applicants and place no obstacle in the way; he must realise that conciliation was only a sham unless it had the consent and co-operation of the parties; and he must know when and where to seek assistance from other persons or agencies. The probation officer had also been usefully employed and was likely to be required even more in future in the investigation of the resources of a defendant who was to be fined or for some other reason charged to make periodical payments into court. These investigations were far more important than they might at first sight appear. There was good reason to think that the number of persons imprisoned for debt could be substantially reduced with proper inquiry and adequate time. The probation officer had innumerable other odd jobs; people went to him in a continuous stream for advice on all their domestic difficulties. He must not be encouraged to accept functions which could properly be discharged by others, and he must know the social agencies available and advise applicants where to go.

The foundation of the probation service had been laid sixty years ago by the Police Court Mission of the Church of England, and many other voluntary societies had assisted from time to time. The service was a good example of one that had originally been voluntary and had gradually come more and more under public control. Substantial progress had been made, but much remained yet to be done. Many probation officers were overburdened, and too many so-called part-time officers with nominal salaries were doing a whole-time job. There were not enough women probation officers, and there were serious defects of organisation. The future development of the service would lie along the lines of a public service, but there was plenty of scope still for voluntary effort, and the inspiration derived from that spirit should not be lost. Success in the future must depend on the fullest co-operation between probation officers, magistrates and the central authority. A livelier sense of responsibility in magistrates was an essential element. Here was a field of social work likely to attract young men and women of stout hearts and warm sympathies, and a distinguished and successful future lay ahead of this great service.

Mr. Thomas Miles Braithwaite, solicitor, of Sudbury, left £34,037, with net personalty £31,064.

Solicitors' Benevolent Association.

The monthly meeting of the Directors was held on the 3rd February at 60, Carey Street, London, W.C.2, with Mr. R. C. Nesbitt in the chair. The following Directors were present: Mr. F. L. Steward (Wolverhampton), Vice-Chairman, Mr. E. E. Bird, Mr. G. S. Blaker (Henley), Mr. P. D. Botterell, C.B.E., Mr. A. J. Cash (Derby), Sir E. Cook, C.B.E., Mr. T. G. Cowan, Mr. N. T. Crombie (York), Mr. T. S. Curtis, Mr. G. C. Daw (Exeter), Mr. E. F. Dent, Mr. A. N. Hickley, Mr. G. Keith, Sir E. F. Knapp-Fisher, Mr. C. W. Lee, Mr. G. E. Longrigg (Bath), Mr. C. G. May, Mr. A. R. Moon (Manchester), Mr. H. F. Plant, Mr. W. N. Riley (Brighton), Mr. F. S. Stancliffe (Manchester), Mr. A. W. Turnbull (Shrewsbury), Mr. H. White (Winchester) and the Secretary. £819 was distributed in grants to necessitous cases, and twenty-three new members were elected, and other business was transacted.

United Law Society.

A meeting of the United Law Society was held in the Middle Temple Common Room on Monday, 8th February, at 8 p.m. Mr. J. H. Vine Hall proposed the motion: "That this House considers that the interests of road users have received too much consideration." Mr. W. M. Permewan opposed. Messrs. Pratt, Hall, Miss Colwill, Messrs. C. H. Pritchard, Hill and McQuown also spoke, and Mr. Vine Hall replied. The motion was put to the House and lost by three votes to nine. Attendance fifteen.

The Hardwicke Society.

A meeting of the Society was held on Friday, 5th February, at 8.15 p.m., in the Middle Temple Common Room, the President, Mr. J. A. Petrie, in the chair. Mr. J. W. Wellwood moved: "That Ulster should be placed under the same government as the Irish Free State." Mr. H. M. Pratt (Ex-President) opposed. There also spoke Mr. Campbell Prosser, Mr. Walter Stewart, Mr. Lewis Sturge (Hon. Sec.), Miss Bedworth, Mr. Cummins, Mr. Fearnehough, Mr. J. A. Petrie (President), Miss Hynes, Mr. Ryan, Prince Lieven, Mr. Ross, Mr. MacDonald, Mr. Llewellyn Thomas (Hon. Sec.). The hon. mover having replied, the House divided, and the motion was lost by eleven votes.

University of London Law Society.

The University of London Law Society had a debate on Tuesday, 9th February. The President, Mr. F. E. C. Wood, was in the chair. Mr. R. E. Gill proposed a motion: "That the basis of liability in defamation actions should be either intention or negligence." Mr. Alley opposed. The motion was lost by five votes to seven. The following also spoke: Messrs. Garner, Gill, Sacker, Robinson, Carmel, Flood, Moighner, Wood and Chand.

The Union Society of London.

A meeting of the Society was held at the Middle Temple Common Room on Wednesday, the 10th February, at 8.15 p.m., the President (Mr. S. R. Lewis) being in the chair. Mr. Russell Clarke proposed the motion: "That this House deplores the intervention of the Church in secular affairs." Mr. Granville Wingate opposed, and Mr. Buckland, the Hon. Treasurer, Mr. Grieves, Mr. Kingston, the Hon. Secretary, Mr. Baker, Mr. Breese and the President also spoke. Mr. Butterfield replied. Upon division the motion was carried by three votes.

Dublin Law Students' Debating Society.

A meeting of the Society was held in the King's Inns on Tuesday, 2nd February, with Mr. McWilliam, Barrister-at-Law, in the chair. The meeting was convened to hold an impromptu debate, which drew a large attendance of members. In the course of the debate many subjects were discussed, ranging from international to domestic affairs. A large number of students took part in the debate, which was lively and witty.

A further meeting of the Society was held on Thursday, 4th February, with Mr. Maloney, Barrister-at-Law, in the chair. This meeting was called to hold a legal debate, namely, "*Lowery* v. *Walker* [1911] A.C.10." Mr. Peart opened for the appellant Walker, being followed by Mr. McDermott; while Mr. Bradfield-England led for the respondent, being followed by Messrs. McDevitt (Auditor) and D. H. Uadhaigh. The chairman, after hearing lengthy arguments and citations from both sides, dismissed the appeal with costs.

Legal Notes and News.

Honours and Appointments.

The King has approved of the appointment of Mr. Justice JOHN STEPHEN CURLEWIS, Chief Justice of the Union of South Africa, to be a member of His Majesty's Privy Council.

The Lord Chancellor has appointed Mr. EDGAR THORNILEY DALE, of 13, Halsey Street, Cadogan Square, S.W.3, to be the Judge of the Birmingham County Court in the place of His Honour Judge Dyer, deceased. The appointment is dated the 6th February, 1937. Mr. Dale was called to the Bar by the Middle Temple in 1909, and joined the South-eastern Circuit.

The Colonial Office announces the following appointments and promotions in the Colonial Legal Service :—

Mr. E. H. HUNTER, appointed Resident Magistrate, Jamaica.

Mr. M. T. HINCKS, Registrar, High Court, Zanzibar, appointed Chief Registrar, Gold Coast.

Mr. G. L. HOWE, Crown Counsel, Gold Coast, appointed Crown Counsel, Straits Settlements.

Mr. C. G. LANGLEY, Attorney-General, Leeward Islands, appointed Puisne Judge, British Guiana.

Mr. PERCY S. HARVEY, Senior Assistant Solicitor to the Corporation of Liverpool, has been appointed Deputy Town Clerk in succession to the present Town Clerk, Mr. W. H. Baines. Mr. Harvey was admitted a solicitor in 1925.

Mr. ROBERT PETTIT, Deputy Town Clerk, has been appointed Town Clerk of Sudbury, in succession to the late Mr. T. Miles Braithwaite.

Notes.

Sir William Firth has been appointed a Director of the Alliance Assurance Company.

The Pegasus Club Ball will be held at the Inner Temple Hall, on Friday, 19th February.

The Commissioner of Police of the Metropolis has issued an order, says *The Times*, against smoking by police officers when waiting in the ante-rooms at the various London police courts to give evidence. Police officers, says the Commissioner, frequently disobey the magistrates' orders that there should be no smoking on the premises. Smoking by police officers attending court not only showed lack of respect to the court, but set a bad example to the public, who, it was found, imitated the officers.

Mr. Percy Milnes Walker, solicitor, of Wombwell Grange, near Barnsley, left 55,025, with net personalty £47,978.

Court Papers.

Supreme Court of Judicature.

Date.	Emergency Rota.	Appeal Court No. I.	Group I. Mr. Justice Eve. Witness Part I.	Mr. Justice Bennett. Witness Part II.
	Mr.	Mr.	Mr.	Mr.
Feb. 15	Jones	More	*Andrews	*Jones
,, 16	Ritchie	Hicks Beach	*Jones	*Ritchie
,, 17	Blaker	Andrews	*Ritchie	*Blaker
,, 18	More	Jones	Blaker	*More
,, 19	Hicks Beach	Ritchie	More	*Hicks Beach
,, 20	Andrews	Blaker	Hicks Beach	Andrews

	Group I. Mr. Justice Crossman. Non-Witness	Mr. Justice Clauson. Non-Witness	Group II. Mr. Justice Luxmoore. Witness Part II.	Mr. Justice Farwell. Witness Part I.
	Mr.	Mr.	Mr.	Mr.
Feb. 15	Ritchie	Hicks Beach	More	*Blaker
,, 16	Blaker	Andrews	Hicks Beach	*More
,, 17	More	Jones	Andrews	*Hicks Beach
,, 18	Hicks Beach	Ritchie	Jones	*Andrews
,, 19	Andrews	Blaker	Ritchie	*Jones
,, 20	Jones	More	Blaker	Ritchie

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 18th February, 1937.

	Div. Months.	Middle Price 10 Feb. 1937.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	111	3 12 1	3 4 10
Consols 2½%	JAJO	81½	3 1 4	—
War Loan 3½% 1952 or after	JD	103½	3 7 8	3 4 5
Funding 4% Loan 1960-90	MN	114¼	3 10 0	3 2 6
Funding 3% Loan 1959-69	AO	99	3 0 7	3 1 0
Funding 2½% Loan 1956-61	AO	90	2 15 7	3 1 11
Victory 4% Loan Av. life 23 years	MS	113	3 10 10	3 3 10
Conversion 5% Loan 1944-64	MN	116	4 6 2	2 6 1
Conversion 4½% Loan 1940-44	JJ	107¾	4 3 6	2 16 3
Conversion 3½% Loan 1961 or after	AO	104½	3 7 0	3 4 7
Conversion 3% Loan 1948-53	MS	101	2 19 5	2 17 9
Conversion 2½% Loan 1944-49	AO	99½	2 10 3	2 11 0
Local Loans 3% Stock 1912 or after	JAJO	93½	3 4 2	—
Bank Stock	AO	362½	3 6 3	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	82½	3 6 8	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	92½	3 4 10	—
India 4½% 1950-55	MN	112½	4 0 0	3 6 1
India 3½% 1931 or after	JAJO	94½	3 14 1	—
India 3% 1948 or after	JAJO	80½	3 14 6	—
Sudan 4½% 1939-73 Av. life 27 years	FA	116	3 17 7	3 11 3
Sudan 4% 1974 Red. in part after 1950	MN	114½	3 9 10	2 14 10
Tanganyika 4% Guaranteed 1951-71	FA	112	3 11 5	2 18 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	107	4 4 1	2 19 6
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	91½	2 14 8	3 1 11
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	109	3 13 5	3 6 7
Australia (C'mm'nw'th) 3% 1955-58	AO	96	3 2 6	3 5 2
Canada 4% 1953-58	MS	110xd	3 12 9	3 4 6
*Natal 3% 1929-49	JJ	100	3 0 0	3 0 0
*New South Wales 3½% 1930-50	JJ	100	3 10 0	3 10 0
*New Zealand 3% 1945	AO	100	3 0 0	3 0 0
†Nigeria 4% 1963	AO	114	3 10 2	3 4 4
*Queensland 3½% 1950-70	JJ	100	3 10 0	3 10 0
South Africa 3½% 1953-73	JD	105	3 6 8	3 1 11
*Victoria 3½% 1929-49	AO	101	3 9 4	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	94	3 3 10	—
*Croydon 3% 1940-60	AO	99	3 0 7	3 1 2
Essex County 3½% 1952-72	JD	106	3 6 0	3 0 5
Leeds 3% 1927 or after	JJ	93	3 4 6	—
Liverpool 3¼% Redeemable by agreement with holders or by purchase	JAJO	104	3 7 4	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	77xd	3 4 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	90xd	3 6 8	—
Manchester 3% 1941 or after	FA	92	3 5 3	—
*Metropolitan Consd. 2½% 1920-49	MJSD	98½xd	2 10 9	2 12 9
Metropolitan Water Board 3% "A" 1963-2003	AO	96	3 2 6	3 2 11
Do. do. 3% "B" 1934-2003	MS	95½xd	3 2 10	3 3 3
Do. do. 3% "E" 1953-73	JJ	99	3 0 7	3 0 11
Middlesex County Council 4% 1952-72	MN	111	3 12 1	3 2 4
* Do. do. 4½% 1950-70	MN	115½	3 17 11	3 2 4
Nottingham 3% Irredeemable	MN	94	3 3 10	—
Sheffield Corp. 3½% 1968	JJ	106	3 6 0	3 3 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	109½	3 13 1	—
Gt. Western Rly. 4½% Debenture	JJ	119½	3 15 4	—
Gt. Western Rly. 5% Debenture	JJ	130½	3 16 8	—
Gt. Western Rly. 5% Rent Charge	FA	129	3 17 6	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	128½	3 17 10	—
Gt. Western Rly. 5% Preference	MA	122	4 2 0	—
Southern Rly. 4% Debenture	JJ	107½	3 14 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	111	3 12 1	3 6 10
Southern Rly. 5% Guaranteed	MA	129	3 17 6	—
Southern Rly. 5% Preference	MA	120	4 3 4	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date ; in the case of other Stocks, as at the latest date.

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